January 14th 1873 Field

Brewer Hunt

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~597.~~ 309 90

JOHN W. KENNICOTT, J. W. WARD, E. W. STONE, A. MYERS, M. J. EARLE, C. WAKEFIELD, J. S. SMITH, H. V. DAVIS, J. L. PRIEST, W. C. PLUNKETT, J. J. DIXWELL, J. SMITH, A. F. GOULD, A. H. WARD, J. BURNETT, W. L. ROLSTON, W. P. EMMERSON, AND W. R. HODGES, APPELLANTS,

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, IMPLEADED WITH THE MOUNT VERNON RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED APRIL 25, 1871.

Dec. 2, 1872

SUPREME COURT OF THE UNITED STATES.

No. 537.

JOHN W. KENNICOTT, J. W. WARD, E. W. STONE, A. MYERS, M. J. EARLE, C. WAKEFIELD, J. S. SMITH, H. V. DAVIS, J. L. PRIEST, W. C. PLUNKETT, J. J. DIXWELL, J. SMITH, A. F. GOULD, A. H. WARD, J. BURNETT, W. L. ROLSTON, W. P. EMMERSON, AND W. R. HODGES, APPELLANTS,

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, IMPLEADED WITH THE MOUNT VERNON RAILROAD COMPANY.

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1 Pleas in the circuit court of the United States of America, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, and pro tempore sole judge of said circuit court, on the first Monday of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

J. A. JONES, *Clerk.*

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Sergeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges, complainants,	In chancery.
2 *vs.*	
THE BOARD OF SUPERVISORS OF WAYNE County and the Mt. Vernon Railroad Company, defendants.	

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

John W. Kennicott, Joseph W. Ward, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Sergeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges, complainants, citizens of the State of Massachusetts, put in their place Messrs. Walter B. Scates, John A. McClernand, Stephen A. Goodwin, Milton Hay, and N. M. Broadwell, their solicitors, against The Board of Supervisors of Wayne County and the Mt. Vernon Railroad Company, corporations located and doing business in the said southern district of Illinois, defendants, who put in their place Messrs. John T. Stu-

3 art, A. L. Knapp, Norman L. Freeman, Charles A. Beecher, and Robert P. Hanna, their solicitors, in a bill in chancery to foreclose mortgages.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, heretofore, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and sixty-five, came said complainants, by their solicitors, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois their bill in chancery against said defendants, and deed of trust from the county court of Wayne County to Isaac Seymour, marked Exhibit "B," and made part of said bill; and also, at the same time, filed their bond for costs in said entitled cause; which said bond for costs, bill, and copy of deed of trust are in the words and figures following, to wit:

4 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court, June term, A. D. 1865.

JOHN W. KENNICOTT ET AL.

THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne and Mount Vernon Railroad Company. } In chancery.

Bond for costs.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 7 day of March, 1865.

D. L. PHILLIPS.

(Indorsed:) Filed March 7, A. D, 1865. P. P. Enos, clerk.

5 *Bill in chancery.*

To the hon. the judges of the circuit court of the United States, presiding within and for the southern district of Illinois, in the 8th circuit court of the United States.

Your orator', John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Wood, residing in the State of Massachusetts, would respectfully show unto your honors that, by an act of the legislature of the State of Illinois, approved February 15th, 1865, there was incorporated a railroad company by the style of "The Mount Vernon Railroad Company," which said act of incorporation is herewith exhibited as a part of this, your orators', bill, and which company as aforesaid was organized for the purpose of building a railroad from Mount Vernon, Ill., to the Illinois Central Railroad, or its Chicago Branch. And your orators aver that, under the 10th section of said act of incorporation, the said company became and was organized, and exercised and became entitled to all the powers and franchises of a body corporate under said act of the legislature.

6 Your orators would further show that, under the authority contained in said act, and the acts referred to in said act, the county court of Wayne County, Illinois, having become possessed and entitled to a large amount of swamp land in said county, under and by virtue of the act of Congress of the U. States, passed Sept. 28th, 1850, entitled "An act giving Arkansas and other States swamp and overflowed lands," and also by virtue of an act of the legislature of the State of Illinois, approved Jan. 22rd, 1852, appropriating said lands to the several counties in which they were located, the said county of Wayne became entitled to a large amount of said swamp and overflowed lands, more particularly hereinafter described and set forth.

And your orators further state that the said county of Wayne, being a county through which said Mt. Vernon Railroad was to run, was, by the 9th section of said act incorporating said Mt. Vernon Railroad

Company, authorized and empowered to aid in the construction of the same, under the provisions of the 7th, 8th, & 9th sections of the said act.

7 And your orators further aver that, under the authority of and pursuant to the provisions contained in the 8th section of said act incorporating The Mount Vernon Railroad Company, the county court of Wayne County did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether said lands should be mortgaged to aid in constructing said road; that notices of said election was duly given, as pre'cribed by said order providing for said election, and that, at the election so held, a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, which was as follows, to wit: "For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county."

8 Your orator would further show, upon the faith of said vote, and in pursuance to the power given them by said acts, the county court of Wayne County did, on the 20th day of April, 1859, adopt the proposition having the highest number of votes, which was the said proposition aforesaid, and did order, adjudge, and determine to appropriate the swamp land of Wayne County to aid in constructing the railroad aforesaid, and to execute a mortgage or conveyance in trust, in conformity to such proposition, and did, in pursuance of such order, on said last day, make, execute, and deliver, to one Isaac Seymour, as trustee, two certain indentures, bearing date as aforesaid, conveying in trust the lands therein described, said lands being the swamp lands of said county, for the uses and purposes therein set forth, copies of which are filed, as Exhibets "A" & "B," in this case, and which your orators pray may be taken and considered a part of this, your orators', bill, as fully as if inserted therein.

9 Your orators further aver that the said Seymour was duly selected, both upon the part of the county of Wayne and the said railroad company, to execute the trust created by said indentures. Your orators would further show that the said railroad company deemed it advisable for the constructing and maintaining their said road to issue, to wit, eight hundred thousand dollars in construction bonds, for the purpose of raising funds for the purposes aforesaid, which said bonds were issued as follows, to wit, four hundred of $500 each; six hundred of $1,000 each, making in all $800,000, as aforesaid; which said bonds are payable in fifteen years from the date thereof, to wit, from the 20th day of April, A. D. 1859, at the Bank of North America, in the city of New York, with seven per cent. per annum interest semi-annually, on the first day of May and November in each year, and for the said interest coupons or warrants for each payment of interest was attached to said bonds, being payable to Isaac Seymour or bearer, said coupons being payable at the place aforesaid.

10 Your orator' would further show that, for the purpose of giving further security for the payment of said bonds, so issued as aforesaid, the said railroad company did, on the 20th day of April, A. D. 1859, execute and deliver to said Isaac Seymour a deed of mortgage of the said railroad of the said Mount Vernon Railroad Company, constructed, and to be constructed, from the village of Ashley, Washington County, Illinois, to the east boundary of Wayne County, Illinois,

in the said State of Illinois, together with all of its said company's real estate, lands, tenements, and hereditaments, acquired and appropriated for the purposes of a right of way for a single or double track railroad, and all the appurtanances thereof, and for depots, engine-houses, car-houses, station-houses, work-shops, superstructures, sections, and fixtures; and also, all and every privilege, franchise, and right of the said rail-road company, acquired at the date of said mortgage, or thereafter to be acquired; and also, all the rails, bridges, ways, pens, depots, engines, houses, car-houses, station-houses, warehouses, work-shops, erec-
11 tions, superstructures, fixtures, privileges, franchises, and rights of the said railroad company whatsoever, and wheresoever then owned by said railroad company, or thereafter to be owned by said company; and also, all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinary, and equipments for the railroad of the said company, or which it might thereafter acquire or receive for the purpose of using in connection with the said railroad; and also, all goods and chattels, employed in and about the operation of said railroad, or thereafter to be owned or acquired, in any way relating or appertaining to the said railroad, together with all the titles, rents, issues, incomes, profits, money, rights, benefits, and advantages to be derived, received, or had therefrom, (of the said railroad company,) in any way whatsoever, and all of which were declared by said mortgage to be appurtanances and fixtures of the said railroad, and to be taken as a part thereof, and to be seperated therefrom, which said mortgage was upon the condition therein more
12 fully shown, a copy of which mortgage is herewith filed, and asked to be made a part of this your orators' bill.

Your orators further allege that the said construction bonds, referred to in said mortgages were issued by said railroad company, duly countersigned by said trustee, and were negotiated in the market to raise funds for the construction of said railroad; that your orators several'y become possessed as bona fide holders of the bonds following to wit:

Your orator John W. Kennicott, of bonds Nos. 14, 15, 34, 212, 252, & 254 of $500 each; and there is now due and unpaid on said bonds twelve semi-ann'al installments of interest.

Your orator Thomas Upham, of bonds Nos. 471, 460, for $1,000 each; Nos. 113, 226, & 234 for $500 each; and there is now due and unpaid on said bonds, $, twelve semi-an'ual installments of interest.

Your orator Ebenezer W. Stone, of bonds No. 353, for the sum of $500; and there is now due and unpaid on said bond twelve installments of semi-an'ual interest.

13 Your orator Joseph W. Ward, of bonds No's 45 for $500; No. 48 for $500; No. 19 for $500; No. 407 for $1,000; No. 40 for $500; No. 252 for $500; No. 373 for $500; No. 41 for $500; No. 56 for $1,000; No. 351 for $1,000; No. 352 for $1,000; No. 356 for $1,000; No. 357 for $1,000; No. 358 for $1,000; No. 372 for $1,000; No. 402 for $1,000; No. 374 for $500; upon which is now due twelve semi-an'ual installments of interest.

Your orator, Joseph W. Ward, the further bonds of No. 386 for $1,000; No. 359 for $1,000; No. 323 for $1,000; No. 268 for $1,000; No. 436 for $1,000; No. 276 for $1,000; No. 409 for $1,000; No. 408 for $1,000; No. 130 for $1,000; No. 59 for $1,000; No. 388 for $1,000; No. 390 for $1,000; No. 395 for $1,000; No. 396 for $1,000; No. 397 for $1,000; No. 404 for $1,000; No. 405 for $1,000; No. 406 for $1,000; No. 368 for $500; No. 369 for $500; No. 366 for $500; No. 365 for $500;

No. 279 for $500; No. 280 for $500; No. 364 for $500; No. 363 for $500; No. 281 for $500; No. 282 for $500; No. 362 for $500; No. 361 for $500; No. 400 for $500; No. 360 for $500; No. 359 for $500; No. 358 for
14 $500; No. 355 for $500; No. 253 for $500; No. 230 for $500; No. 43 for $500; No. 93 for $500; No. 267 for $1,000; upon which there is due and unpaid twelve semi-an'ual installments of interest upon coupons thereto attached.

Your orators would further show that a large amount of the interest on the coupons attached to said bonds is due and unpaid, and that demand has been duly made for the payment thereof.

Your orators would further show that neither said railroad company nor said county of Wayne made any provisions for the payment of said interest at the place of payment designated in said coupons; but, upon the contrary, made default—by which said default the condition of the said several deeds of mortgage or conveyance became forfeited and absolute in said trustee for the benefit of your orators and others having, as bona fide holders, any of the bonds issued as aforesaid and upon which interest remains unpaid.

Your orators would further show that, on or about the day
15 of , A. D. 186 , the said Isaac Seymour departed his life.

Your orators are not informed as to what extent during his lifetime the said trustee executed or performed any of the trusts created by said deeds as aforesaid, nor are they informed what has been done between the said trustee and the county court of Wayne County, Illinois, and said railroad company, under any of the conditions or provisions contained in said deeds of trust.

Your orators further aver that, by the death of said trustee, said trust has become incapable of execution without the aid of this honorable court in the premises. Now, inasmuch, therefore, as your orators are without adequate remedy at law, yours honors are respectfully asked to take cognizance of this your orators' bill, that the said The Board of Supervisors of the County of Wayne, and the said Mount Vernon Railroad Company made parties defendent herein, and that a subpœna
in chancery issue against them, and that they be required to
16 answer all and singular the allegations of this bill according to the practice and rule of this honorable court; and that they be required to specifically set forth and disclose a full, ample, and true account of whatever may have been done (if anything) under the deeds and mortgages aforesaid, and that an account may be taken of what may be due your orators on the coupons aforesaid, all your orators bring this bill on behalf of themselves, and all other bona fide holders of any of the bonds issued as aforesaid, who may or proper terms avail themselves of the decree made herein; and your orators ask for such other relief as may seem to your honors just and equitable. And in duty bound your orators will ever pray.

HAY & CULLOM WELDON.

(Indorsed:) Filed March 7th, 1865. P. P. Enos, cl'k.

For Exhibit "A," see page 190.
For " "B," " " 239.

17 And afterwards, to wit, on Monday the first day of May, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE COUNTY OF WAYNE. } In chancery.

On motion of the complainants' solicitors leave is granted them to amend their bill by changing names of parties.

Then afterwards, to wit, on the sixth day of August of the year last aforesaid, the following further proceedings were had in said court at the August special term thereof in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne et al. } In chancery.

18 Now come the complainants, by L. Weldon, esq., their solicitor, and now comes also the defendant, by Messrs. Freeman & Beecher, their solicitors; and, on motion of the complainants, by their solicitor, it is ordered by the court that complainants have leave to amend their amended bill herein by the first Monday of October next; and, by agreement of the parties, by their respective solicitors, it is further ordered that the hearing of the demurrer now or to be hereafter filed to said amended bill be set for hearing on the first Monday of December next.

And afterwards, to wit, on the third day of October, in the October chancery term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record to wit:

Order of court,

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne et al. } Bill in chancery.

Now come the complainants, by L. Weldon, esq., and Messrs. Hay and Cullum, their solicitors; and, upon their motion, it is or ordered by the court that the leave heretofore granted complainants to amend their bill herein be, and is hereby, extended to the first Monday of January next.

19 Afterwards, to wit, on the twenty-ninth day of March, of the year last aforesaid, came again said complanants, by their said solicitors, and filed in said clerk's office their amended bill, which is in the words and figures following to wit:

Amended bill.

To the hon. the judges of the circuit court of the United States presiding within and for the southern district of Illinois in the 8th circuit court of the United States.

Your orators, John W. Kennicott, Thomas Upham, Ebenezer W.

Stone, Joseph W. Ward, residing in the State of Massachusetts, would respectfully show unto your honors that, by an act of legislature of the State of Illinois, approved February 15th, 1855, there was incorporated a railroad company by the style of the "Mount Vernon Railroad Company," which said act of incorporation is herewith exhibited as a part of this your orators' bill, and which company, as aforesaid, was organized for
the purpose of building a railroad from M't Vernon, Illinois, to
20 the Illinois Central Railroad, or its Chicago branch. And your orators aver that, under the 10th section of said act of incorporation, the said company became and was organized, and exercised and became entitled to all the powers and franchises of a body corporate under said act of the legislature.

Your orators would further show that, under the authority contained in said act and the act referred to in said act, the county court of Wayne County, Illinois, having become possessed and entitled to a large amount of swamp land in said county, under and by virtue of the act of Congress of the U. States, passed Sept. 28th, 1850, entitled an act giving Arkansas and other States swamp and overflowed lands; and also, by virtue of an act of the legislat*ion* of the State of Illinois, approved January 22d, 1852, appropriating said lands to the several counties in which they were located, the said county of Wayne became entitled
to a large amount of said swamp and overflowed lands, more par-
21 ticularly hereinafter described and set forth in deed of trust named herein. And your orators further aver that the county of Wayne being a county through which a railroad run, or was projected to run connecting, joining, and intersecting with the said Mt. Vernon Railroad, and said Mt. Vernon Railroad Company having proposed to build and construct said road, thus intersecting with the Mount Vernon Railroad through the county of Wayne and to Mount Vernon.

And your orators further aver that, under the authority of, and pursuant to the provisions contained in, the 8th section of said act incorporating the M't Vernon Railroad Company, the county court of Wayne County did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether the said lands
should be appropriated as a bonus to aid in constructing a railroad
22 through said county; that notices of said election were duly given as prescribed by said order providing for said election, and that at the election so held, a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, which was as follows, to wit: For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county upon the faith of said vote, and in pursuance to the power given them by said acts, the county court of Wayne county did, on the 20th day of April, 1859, adopt the proposition having the highest number of votes, which was the said proposition aforesaid, and did order, adjudge, and determine to appropriate the swamp land of Wayne County to aid in constructing the railroad aforesaid, and to execute a mortgage or conveyance in trust in
conformity to such proposition; and did, in pursuance to such
23 order, on said last day make, execute, and deliver to one Isaac Seymore, as trustee to certain indentures bearing date as aforesaid, conveying in trust the lands therein, being the swamp lands of said county described, said lands for the uses and purposes therein set forth, copies of which are filed as Exhibits "A" and "B" in this case,

and which your orators pray may be taken and considered as a part of this your orators' bill, as fully as if inserted therein.

Your orators further aver that said Seymore was duly selected, both on the part of the county of Wayne and the said railroad company, to execute the trust created by said indentures. Your orators would further show that the said railroad company deemed it advisable for the constructing and maintaining their said road, and the road through said county, to issue, to wit, eight hundred thousand dollars in construction bonds, for the purpose of raising funds for the
24 purposes aforesaid, which said bonds were issued as follows, to wit: Four hundred, of $500 each; six hundred, of $1,000 each; making in all, $800,000 as aforesaid, which said bonds are payable in fifteen years from the date thereof, to wit, from the 20th day of April, A. D. 1859, at the Bank of North America, in the city of New York, with seven per cent. per annum, interest semi-annually, on the first day of May and November in each year. And for the said interest, coupons or warrants for each payment of interest was attached to said bonds, said bonds being payable to Isaac Seymour, or bearer, said coupons being payable at the place aforesaid.

Your orators would further show, that for the purpose of giving further security for the payment of said bonds so issued as aforesaid, the said railroad company did, on the 20th day of April, A. D. 1859, execute and deliver to said Isaac Seymour, a deed of mortgage of
25 the said railroad of the said Mount Vernon Railroad Company, constructed and to be constructed from the village of Ashley, Washington County, Illinois, to the east boundary of Wayne County, Illinois, in the said State of Illinois, together with all of its said company's real estate, lands, tenements, and hereditaments, acquired and appropriated for the purposes of a right of way for a single or double track railroad, and all the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, work-shops, superstructures, sections, and fixtures; and also, all and every privilege, franchise, and right of the said railroad company acquired at the date of said mortgage, or thereafter to be acquired; and also, all the rails, bridges, ways, pens, depots, engine-houses, car-houses, station-houses, warehouses, work-shops, erections, superstructures, fixtures, privileges, franchises, and rights of the said railroad company whatsoever, and wheresoever then owned by said railroad company; and also, all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all
26 other cars, carriages, tools, machinery, and equipments, for the railroad of the said company, or which it might thereafter acquire or receive, for the purpose of using in connection with the said railroad; and also, all goods and chattels employed in and about the operation of said railroad, or thereafter to be owned or acquired, in any way relating or appertaining to the said railroad, together with all the titles, rents, issues, incomes, profits, money, rights, benefits, and advantages to be derived, received, or had therefrom, of the said railroad company, in any way whatsoever, and all of which were declared by mortgage to be appurtenances and fixtures of the said railroad, and to be taken as a part thereof, and to be separated therefrom, which said mortgage was upon the condition therein more fully shown, a copy of which mortgage is herewith filed and asked to be made a part of this your orators' bill.

Your orators further allege that the said construction bonds referred to in said mortgages, were issued by said railroad company, duly
27 countersigned by said trustee, and were negotiated in the mar-

ket to raise funds for the construction of said railroad. That your orators severally became possessed as bona fide holders of the bonds following, to wit:

Your orator John W. Kennicott, of bonds No. 14, 15, 34, 212, 252, and 254, of $500 each; and there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Thomas Upham, of bonds Nos. 471, 460, for $1,000 each; Nos. 113, 226, and 234 for $500 each; and there is now due and unpaid on said bonds, twelve semi-annual installments of interest.

Your orator, Ebenezer W. Stone, of bonds Nos. 353, for the sum of $500; and there is now due and unpaid on said bond twelve installments of semi-annual interest.

Your orator Joseph W. Ward, of bonds No. 45 for $500; No. 48 for $500; No. 407 for $1,000; No. 40 for $500; No. 375 for $500; No. 41 for $500; No. 56 for $1,000; No. 351 for $1,000; No. 352 for $1,000; No. 356 for $1,000; No. 357 for $1,000; No. 358 for $1,000
28 No. 372 for $1,000; No. 402 for $1,000; No. 374 for $500; upon which is now due twelve semi-annual installments of interest.

Your orator Joseph W. Ward, the further bonds of, No. 386 for $1,000; No. 359 for $1,000; No. 323 for $1,000; No. 268 for $1,000; No. 436 for $1,000; No. 409 for $1,000; No. 408 for $1,000; No. 130 for $1,000; No. 59 for $1,000; No. 276 for $1,000; No. 388 for $1,000; No. 390 for $1,000; No. 395 for $1,000; No. 396 for $1,000; No. 397 for $1,000; No. 404 for $1,000; No. 405 for $1,000; No. 406 for $1,000; No. 368 for $500; No. 369 for $500; No. 279 for $500; No. 280 for $500; No. 366 for $500; No. 365 for $500; No. 281 for $500; No. 282 for $500; No. 364 for $500; No. 363 for $500; No. 362 for $500; No. 361 for $500; No. 400 for $500; No. 360 for $500; No. 359 for $500; No. 358 for $500; No. 355 for $500; No. 253 for $500; No. 230 for $500; No. 43 for $500; No. 93 for $500; No. 19 for $500; No. 251 for $500; No. 267 for $1,000;
29 upon which there is due and unpaid twelve semi-annual installments of interest upon coupons thereto attached.

Your orators would further show that a large amount of intereerst due upon the coupons attached to said bonds is due and unpaid and that demand has been duly made for the payment thereof.

Your orators would further show that neither said railroad company, nor said county of Wayne made any provisions for the payment of said interest at the place of payment designated in said coupons; but, upon the contrary, made default—by which said default the condition of the said several deeds of mortgage or conveyance became forfeited and absolute in said trustee for the benefit of your orators and others having, as bona fide holders, any of the bonds issued as aforesaid, and upon which interest remains unpaid.

Your orators would further show that, on or about the day of A. D. 186 the said Isaac Seymore departed this life.

30 You orators further aver that the said Isaac Seymour, trustee as aforesaid, failed and neglected to perform all or any of the trusts created by said deeds, and did not pay to your orators by the execution of said trust in any way any of the bonds aforesaid, or any interest thereon as aforesaid, but failed and neglected so to do, nor has the county court aforesaid, nor any person for them, done anything in payment or settlement of said bonds or said interest.

Your orators further aver, that by the death of said trustee, said trust has become incapable of execution without the aid of this honorable court in the premises. Now, inasmuch, therefore, as your orators are without adequate remedy at law, your honours are respectfully asked to

take cognizance of this your orators' bill, that The Board of Supervisors of the County of Wayne and the said Mt. Vernon Railroad Company be made parties defendant herein, and that a subpœna in chancery be made to issue against them, and that they be required to answer all
31 and singular the allegations of this bill according to the practice and rules of this honourable court, and that they be required to specifically set forth and disclose a full, complete, and true account of whatever may have been done (if anything) under the deeds and mortgages aforesaid, and that an account may be taken of what may be due your orators on the coupons aforesaid. And it having been suggested that the said Isaac Seymour is dead, your orators ask the appointment of some competent person to act as trustee in the performance of the trust created by said deeds, exercising the same authority and power as the said Seymour might have exercised under said mortgage in the performance and execution of the trust in said mortgage mentioned, and that he be compelled to execute said trust under the authority and sanction of this court, or in alternative, if it shall appear that your orators are entitled to a decree foreclosing said mortgage or deed of trust, and are entitled to a relief by a direct order for the sale of
32 said lands or any part thereof, that said decree may be rendered; and for such other and further relief as to your honors may seem equitable and just. And your orators bring this bill in behalf of themselves and all other bona fide holders of any of the bonds issued as aforesaid, who may on proper terms avail themselves of the decree made herein.

HAY AND WELDEN,
Solicitors.

(Endorsed) Filed M'ch 29, 1866. P. P. Enos, clerk.

33 And afterwards, to wit, on the first day of October, in the year last aforesaid, came again said complainants, by their said solicitors, and filed in said clerk's office their 2nd amended bill of complaint, which is in the words and figures following, to wit:

2nd amended bill of complaint.

UNITED STATES OF AMERICA,
Southern District of Illinois:

To the honorable the judges of the circuit court of the United States for the southern district of Illinois, in the 8th circuit court of the United States:

Your orators, John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, and Austin Myers, who are citizens of the State of Massachusetts, residing in said State, would respectfully show unto your honors that, heretofore, to wit, the fifteenth day of February, A. D. 1855, the legislature of the State of Illinois, by an act entitled An act to incorporate the Mount Vernon Railroad Company, approved the said 15th day of February, 1855, enacted that all such persons and corporations as should become stockholders under the provisions
34 of said act and their successors be, and were thereby, created a body politic an' corporate by the name of The Mount Vernon Railroad Company, with all the rights and powers incident and necessary to such corporation, which said act of incorporation is herewith exhibited as a part of the bill of complaint.

And your orators further show that, by said act of incorporation, it was provided that, when an amount equal to one thousand dollars per mile of the route of said road was subscribed, the subscribers might meet at Mount Vernon and elect seven directors, and as many more from time to time as may be fixed by law; that, by said act of incorporation, there was created an incorporation by the name and style of the Mount Vernon Railroad Company; that, after the incorporation of the said Mount Vernon Railroad Company by the legislature of the
35 State of Illinois, and before the day of , there was subscribed to the capital stock of said corporation an amount equal to one thousand dollars per mile of the route of said road, to wit, the sum of dollars; that, after the said subscription to the capital stock of said company, as required by said act of incorporation, and as hereinbefore set forth, the subscribers to said capital stock, to wit, on the , met at Mount Vernon, Illinois, and elected a board of seven directors for said company, and also, at the same time there was duly elected a president, secretary, and treasurer of said company, and said company became then and there duly organized, under & by virtue of said act of incorporation; that said railroad company was and is located in the State of Illinois, and is a citizen of said State, and is a body corporate under the laws of Illinois, and was and is entitled to all
36 the powers & franchises of a body corporate under its act of incorporation.

And your orators further show unto your honors that said Mount Vernon Railroad Company, on the 20th day of April, 1859, for the purpose of raising funds from time to time for the construction and completion of its railroad and branches authorized by said act of incorpotion, and for the purchase of iron and other materials to be used therein, and for the expenses of the organization and maintenance of the said corporation, and compensation of the officers and agents, trustees, engineers, and other necessary assistants, made and executed six hundred bonds of one thousand dollars each, dated the twentieth day of April, 1859, and each of said bonds was made payable to Isaac Seymour or bearer, which said bonds, and the money thereon to become due, said railroad company promises to pay, on presentation thereof, to the
37 holder thereof, at the Bank of North America, in the city of New York, on the first day of May, 1874, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until said principal sum should be paid, on presentation of the proper interest warrants annexed to said bonds, at the said Bank of North America; and it was provided in each of said six hundred bonds that full payment of the principal and interest of the whole issue of said bonds is secured by a mortgage bearing even date with said bonds to said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the State and county for the purpose of constructing and maintaining said railroad, and also, by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said
38 company, *to* which said bonds were duly executed by the president and treasurer of said railroad company, under the corporate seal of said company; to *use* each of which said bonds there was and is attached interest warrants for the semi-annual interest to grow due upon said lands, for the sum of thirty-five dollars each, payable the first day of May and November in each year after the date of said bonds to the time when the principal sum mentioned in said bonds became due

and payable by the terms of each of said bond, and made payable at the Bank of North America, in the city of New York, and were duly signed by the secretary of said company.

And your orators further show that, at the same time of the execution by said company of the above-mentioned six hundred one thousand dollar bonds, the said Mount Vernon Railroad Company made
39 and executed four hundred bonds, each for the sum of five hundred dollars, payable at the same time, and in the same manner, and at the same place, that the above-mentioned one thousand dollar bonds were; that said last-mentioned bonds were issued for the same purpose & objects that said first-mentioned were issued for, and payable, with interest at the rate of seven per centum per annum, semi-annually, at the Bank of North America, in the city of New York, on the first day of May and November in each year, until the principal sum in said last-mentioned bonds was due and payable; that to each of said last-mentioned bonds there was attached interest warrants for the semi-annual interest due upon said bonds, payable at the same time and place with the interest warrants attached to said one thousand dollar
40 bonds, which last-mentioned coupons were executed by the said secretary of said company; that said one thousand dollar bonds were numbered from one to six hundred, and said five hundred dollar bonds were numbered from one to four hundred; that said last-mentioned bonds were secured by the same mortgage as was provided for the securing of said one thousand dollar bonds, & all of said bonds were for the same object and purpose, and was, in fact, but for one loan for the benefit of said railroad company; that all of said bonds were issued by order of the board of directors of said company at a meeting of said board of directors, duly held at the office of the company for that purpose.

And your orators further show unto the court that, on the same twentieth day of April, 1859, and at the same time of the execution of the said above-mentioned bonds, and for the purpose of securing the
41 payment of said bonds & the interest thereon as the same should become due and payable, according to the terms and conditions of the interest warrants attached to each of said bonds, the said Mount Vernon Railroad Company made, executed, and delivered its certain indenture of mortgage, dated the 20th day of April, 1859, made payable to Isaac Seymour, esquire, cashier of the Bank of North America, at the city of New York, as trustee for the purposes as mentioned in said indenture of mortgage; that said Mount Vernon Railroad Company, in said indenture, was described as the party of the first part, and said Isaac Seymour as party of the second part, in which said indenture it is recited, Whereas the parties of the first part, for the purpose of raising funds from time to time for the construction and completion of the railroad and branches authorized by the provisions of the said act
42 of incorporation, and for the purchase of iron and other materials to be used therein, and for the expenses of the organization and maintanance of the said corporation, and compensation of the officers and agents, trustees, engineers, and other necessary assistants, propose to execute and deliver their construction bonds or obligations in pursuance of the provisions of the act aforesaid, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations in the just and full sum, in the aggregate, of eight hundred thousand dollars, lawful money of the United States of America, secured to be paid by their six hundred construction bonds or obligations of and for one thousand dollars

each, and by their four hundred construction bonds or obligations
43 of and for five hundred dollars each, providing for the payment unto said persons, associations, bodies politic or corporate, and their executors, administrators, successors, survivors, and assigns, respectively, of one thousand dollars and five hundred dollars named in said construction bonds or obligations respectively, on the first day of March, 1874, and also interest for the same at and after the rate of seven per centum per annum, payable on the first day of every month of March and September ensuing the date of the said construction bonds or obligations, until the principal sums and interest named in said construction bonds or obligations respectively shall be severally paid and satisfied in the manner and form in the said construction bonds or obligations set forth and declared, as by reference to said bonds will more fully appear; which said construction bonds or obligations,
44 referred to in said indenture of mortgage, are the same bonds hereinbefore set forth and described in this bill of complaint, and no other. And it is further recited in said indenture that the payme't of said construction bonds or obligations is primarily secured by a mortgage on one hundred thousand acres of land in said county of Wayne, bearing even date of the said indenture executed by said railroad company; that the execution of the mortgage of said lands in Wayne County was by the judges of the county court of said county of Wayne, pursuant to the charter of said Mount Vernon Railroad Company, as provided in said mortgage; that, by the said indenture of mortgage, the said Mount Vernon Railroad Company, under and pursuant to the powers vested in it by the laws of the State of Illinois, and the proceedings thereunder, and also under and pursuant to a resolution of its board of directors, duly made
45 and entered upon the minutes of the proceedings of its said board, for the purpose and with the intent better to secure the payment of the said bonds, with the interest thereon, according to the tenor and effect of the same, and in consideration of one dollar, lawful money of the United States of America, by said party of the second part, (to wit, by the said Isaac Seymour, trustee,) in hand well and truly paid to the said party of the first part at or before the ensealing and delivering of said indenture, the receipt whereof was acknowledged in and by said indenture, granted, bargained, sold, and conveyed, assigned, transfer'ed, and set over, enfeoffed, conveyed, and confirmed, and by said presents did grant, bargain, sell, assign, transfer, and set over, convey, and confirm to the parties of the second part in said indenture named as trustee, and in trust, and to his heirs, execu-
46 tors, administrators, and his or their successors, all and singular the railroad of the said Mount Vernon Railroad Company, constructed and to be constructed from the village of Ashley, Washington County, to the eastern boundary of Wayne County, in the State of Illinois, together with all its said company' real estate, lands, tenements, hereditaments, acquired and appropriated for the purpose of a right of way for single or double-track railroads, and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures; and also, all and every the privileges, franchises, and rights of the said party of the first part acquired at the date of said mortgage, or thereafter to be acquired by it; and also, all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, su-
47 perstructures, fixtures, privileges, franchises, and rights of the said party of the first part in said indenture, wheresoever and

whatsoever then owned by the said party of the first part, or thereafter to be owned by it, together with all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinery, and equipments for the railroad of the said party of the first part, or which it may thereafter acquire or secure for the purpose of using in construction with the operation of the said railroad; and also, all goods and chattels employed in and about the operation of said road, then owned by the said party of the first , or thereafter to be owned or acquired by it, in any way relating or appertaining to the said railroad, together with all the toll, rents, issues, incomes, profits, moneys, rights, benefits, and advantages to be derived, received, or had therefrom by said party of first part, in any way whatsoever; all which are declared to be appurtenances and fixtures
48 of said railroad to be taken as part thereof, and not to be seperated therefrom: To have and to hold the premises, property, rights, privileges, and franchises in said indenture set forth, and assigned or intended so to be, and every part or parcel thereof, with the appurtenances, to the said Isaac Seymour, and his successors, in trust for the person or persons, bodies politic or corporate, who should become holders of said lands or any of them, subject to the terms and stipulations of the said bonds and the several laws and acts of the legislature of the State of Illinois relating to said company; and said indenture was upon the condition and express understanding and provision that if the said corporation, parties of the first part to said indenture, its successors or assigns, shall well and truly pay, or cause to be paid, the sum of
49 money mentioned to be paid in the said bonds, to secure which said mortgage was made, and the interest thereon at the time and in the manner as respectively mentioned in said bond, according to the true intent and meaning thereof, that the presents mentioned in said indenture, and the estate thereby granted, should cease, determine, and be void; and the said party of the first part in said indenture, in and by said indenture, covenant and agree to well and truly pay the said sums of money mentioned in the said bonds to be paid respectively, together with the interest thereon; and it was in and by said indenture provided that in case default shall be made in the payment of the interest on any of the said bonds, or any part thereof, on any day when the same should have been lawfully demanded, and the same shall remain in arrears sixty days thereafter, or if the default should be made in the
50 payment of the principal of the said construction bonds, and the same cannot be realized from the avails or by a sale of the lands described in a mortgage hereinafter described & set forth, and bearing even date with said indenture executed by said railroad company, it shall and may be lawful, and by said indenture it was provided, that the party of the second part was thereby expressly and fully authorized and empowered to enter upon, and in that case take possession of, all and singular the said railroad and the property and premises thereby in said indenture mortgaged; and through the agency of persons he might from time to time appoint, collect, and receive the tolls, incomes, and profits of said roads thereby conveyed for the purpose of the security of said bonds above set forth; and said trustee thereupon, within
51 such reasonable time as to him should seem proper, not less than sixty days, and upon an advertisement of at least six weeks, to be had in one or more newspapers published in Chicago and Springfield, in the State of Illinois; Indianapolis, in the State of Indiana; and in the city of New York, before the time fixed for such sale, which advertisement should mention the day, hour, and place at which such sale

shall be had, and shall proceed to sell at public auction, to the highest bidder, as well the said railroad franchises as all other property and premises thereby granted and conveyed, or intended so to be, and all benefit and equity of redemption of the party of the first part therein whatsoever, with the benefit of the franchises, and subject to the conditions thereof; and it was further provided that the attorney for said company for the purpose, said trustee, his heirs, executors, and
52 administrators or their successors, shall have full power and authority to make and deliver to the purchaser or purchasers good and sufficient deed or deeds of conveyance for the road, lands, tenements, and real estate, in fee-simple, or otherwise, according to the title or interest of the said company therein, and good and proper conveyance and assignments of the other property thereby granted and assigned; that such sale, so to be made, shall be a perpetual bar, both at law and equity, against the party of the first part, its successors and assignee, and all persons claiming by, from, or under it or them in any wise; that such sale and conveyance, so to be made, shall operate to transfer all the right, title, and interest reversionary or otherwise of the said The Mount Vernon Railroad Company in the premises so sold and con-
53 veyed; that, out of the monies arising either from the income or profits of the said road, or the sale thereof, after making certain deductions mentioned in said indenture, the same trustee, his heirs, executors, administrators, or successors shall first pay and discharge all costs, charges, counsel fees, and expenses incurred in and about his proceedings in the execution of the trusts of said mortgage, including a reasonable compensation to himself for his services therein; and second to apply so much of the residue of said monies as may be necessary to pay and discharge in full all the monies due on said bonds, thereby intended to be secured, with the interest thereon then due. That said indenture was duly executed by the president and treasurer of said railroad company, under corporate seal of said company thereto at-
54 tached, and the execution thereof acknowledged before the clerk of the circuit court of Wayne County, Illinois, on the day of the date of said indenture, and said indenture was afterwards duly recorded as a mortgage, in the recorder's office of deeds, of Wayne County, Illinois, the 20 day of April, 1869, and also recorded in the office of recorder of deeds, in the county of Jefferson, the 21 day of April, 1859, and in the office of recorder of deeds for Washington County, Illinois, the 22 day of April, 1859, as will more fully appear by the certificate of the recorder of deeds of the several counties in which said indenture was recorded, a copy of which mortgage, acknowledgement, and certificates of recording the same is hereto attached and made an exhibit, and also part of the bill, the same as tho' copied into the body of the bill. And your orators further show unto this court that, by virtue of the seventh, 8, 9, & 10 sections of an act entitled An act to incorporate the
55 Mount Vernon Railroad Company, hereinbefore set forth, the said corporation was authorized to borrow such sums of money as it might deem advisable, & upon such terms as it might agree for the carrying out of the objects of said act, and might provide any security. Also, the county court of Jefferson County, Illinois, were authorized and empowered to subscribe for said amount of the capital stock of said company as they might think proper. Also, they might issue bonds of the county, and provide for the payment of the principal and interest thereof by sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money or otherwise in payment of the subscription aforesaid, upon such terms and in such

mode as they should deem or also they might make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they should deem best
56 for the public interest of said county. That, by the ninth section of said act, it was provided that before any disposition should be made of said swamp and overflowed lands, or any subscription to the stock of said company, the county court might, at any regular or special term of said court, order a special election to be held for the purpose of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they might deem proper, and which should be conducted, and returns made, canvassed, and published in all respects as other county elections; also, the said county court shall prepare a proposition or propositions of the mode or modes, one or more containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road, which said proposition shall be printed at large as an election ticket; and the voters may express their
57 will in said proposition by yea and nay in said ticket. Those opposed to any and all the propositions or plans, may express their dissent by voting "Nay," on a separate ticket. The proposition or plan having the highest number of votes, shall be adopted by the county court, provided the majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election. That, by the tenth section of said act, any county through which said road may run, and every county through which any other railroad may run, which said road named in said act may be joined, connected, or intersected, may, and are thereby, authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect; and for that purpose the provisions of the 7, 8, & 9th sections of said act, hereinbefore set forth, shall extend, include, and be applicable to every such county, and every such railroad. And your orators further show that, at the time
58 of the passage of such act of the legislature of the State of Illinois, to wit, on the 15 February, 1855, there was then a line of railroad laid out & established in and through the county of Wayne, in the State of Illinois, by the Belleville & Fairfield Railroad Company, a corporation enacted by & duly organized under and by virtue of the laws of Illinois; that said last-mentioned company had previous thereto become fully organized, with all proper & necessary officers, as required by the law under which said company was created. That, afterwards, and about the 30th day of April, A. D. 1855, the said board of directors, and the president of the Mount Vernon Railroad Company, and the board of directors & the president of the Belleville & Fairfield R Railroad Company, and the secretaries of both of said railroad companys, met at the office of the Mount Vernon Railroad Company, in the town of Mount Vernon, in the county of Jefferson, Illinois, and,
59 by a mutual agreement of the said two railroad companys, and under and by virtue of the laws of the State of Illinois, the said two roads were joined, connected, or intersected; and also, said two roads, by such agreement, were then and there so consolidated as to make but one road running through said counties of Wayne and Jefferson; that by said joinder, connection, or consolidation of said two companies under said agreement, the said companies were organized under the name of the Mount Vernon Railroad Company; and the said board of directors and said companys did, then and there, elect a joint board of directors for said connected, joined, intersected, or consolidated companies, in the place and stead of the several boards of directors of said companies;

and also, did then and there elect a president, secretary, and treasurer of said consolidated companies, who entered upon the respective duties of their said offices; that by said joinder, connection, or intersec-
60 tion, or consolidation of said two companies in the manner above set forth under the said name of the Mount Vernon Railroad Company, said last mentioned company, the county court of Wayne County, Illinois, by virtue of the 7, 8, 9 & 10th sections of the act hereinbefore set forth, were authorized to make and execute the mortgage and deed of trust hereinafter set forth, and to make such disposition of the swamp and overflowed lands in the county of Wayne aforesaid, in aid of the construction and maintenance of the said last-mentioned company's railroad as they might deem best for the public interest of said county of Wayne.

And your orators further show unto this court that, after the joinder, connection, and intersection, or consolidation of said two ro'ds as hereinbefore set forth, and before the execution of the said mortgage and deed of trust hereinafter set forth by the county court for said
61 county of Wayne, at a term of said court held at the court-house in the county of Wayne for that purpose, by the judges thereof, did order and dispose of the swamp and overflowed lands in the county of Wayne, then being the property of the county of Wayne, and said lands hereinafter particularly describe', by order and decree that said county court of Wayne County execute and deliver to said last-mentioned railroad company a mortgage and deed of trust of and upon the above-mentioned lands as a security for the payment of the bonds herein above set forth, issued by the said Mount Vernon Railroad Company, and to aid by said lands and the mortgage and trust deed said railroad to construct and maintain said railroad, and by such mortgage and deed of trust to pledge and mortgage said lands for the payment of said before-mentioned bonds, & to the extent and value of said lands to assume the payment of said bonds.

62 And your orators further show that, before any disposition was made by said county court of Wayne County, of the swamp and overflowed lands in Wayne County, belonging to said Wayne County, Illinois, at a special term of the said county court of the county of Wayne, held on the 28th day of September, 1855, an order was duly made and entered by said court, whereby a special election was ordered and directed to be held on the 5th day of November, 1855, for the purpose of taking the sense of the qualified voters of the county of Wayne upon the mortgaging of that portion of the overflowed and swamp lands, or to donate said lands as a bonus, in the said county & hereafter described, for the purpose of aiding in the construction and maintenance of the said The Mount Vernon Railroad; and the said county court did then and there order public notice of such special election, to be
63 given by advertisement, in accordance with the statute laws of the State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did then and there prepare a proposition containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket, and furnished the same to the qualified voters of county, to be used at such election, in the words and figures following, to wit: For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county against the same. That, in pursuance of said order and notice, a special election of the qualified voters of said county was duly held on the said

5th day of November, 1855, and conducted in all things in con-
64 formity to the provisions of said act incorporating said railroad company and the laws of the State of Illinois, and the returns of such election made, canvassed, and published in all respects as other county elections are required to be in and by said laws. That, at said election, the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by casting and voting "Yea" upon the said several printed propositions or tickets cast by said voters at the said election. That, afterwards, and on or about the 20 day of April, 1859, in open court, at a term of said county court of Wayne County, upon the returns of said special election being duly made, canvassed, and publlshed as required by law, the said county court, of the county of Wayne, did adopt the proposition or plan having the highest number of votes as
65 above set forth, and did order, adjudge, and determine to execute a mortgage upon the swamp and overflowed lands of the county of Wayne to Isaac Seymour, trustee, for the benefit of the Mount Vernon Railroad Company, joined, connected, intersected, or consolidated as before mentioned, in conformity to said proposition or plan, and according to the provisions and terms of the said mortgage hereinafter set forth and described, for the purpose of aiding in the construction and maintain'g the said Mount Vernon Railroad.

And your orators further show unto the court that the said bonds hereinafter described, to the amount of eight hundred thousand dollars, and the said first above-described mortgage was executed and delivered, by the said The Mount Vernon Railroad Company, after the joinder, connection, intersection, or consolidation of said two companies herein-
before set , and said lands were the bonds of said joined, con-
66 nected, or consolidated companies.

And your orators further show unto the court that the lands mortgaged to said railroad by the county of Wayne, as hereinafter set forth and described, were lands appropriated to the county of Wayne, Illinois, by an act of the legislature of the State of Illinois, entitled An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same, approved the 22 June, 1852.

And your orators further show unto this court that the county court of Wayne County, Illinois, on or about the 20th day of April, 1859, by virtue of the law of the State of Illinois, and the order and determination of said county *county* court, and to carry out the plan or proposition submitted to the qualified voters of said Wayne County, as before set forth and assented to*o* by a majority of all the voters of said
67 Wayne County, became endowed with the requisite power, and as thereby, to dispose of and mortgage the swamp and overflowed lands of Wayne County to the Mount Vernon Railroad Company, joined, connected, and intersected or consolidated, as aforesaid, for the purpose of aiding the construction and maintenance of said last-mentioned company's railroad; and the said county court having also determined and adjudged it best for the public int*rust* of the said county of Wayne that the lands, hereinafter described, being the swamp and overflowed lands of said Wayne County, should be conveyed in trust to Isaac Seymour of New York, for the uses, purposes, and benefits, as set forth in said mortgage hereinafter set forth, upon the terms and conditions set forth in said mortgage.

And your orators further show unto the court that, afterwards, to wit, on or about the 20th day of April, 1859, the said county court

of Wayne County, Illinois, *by virtue of the* by the judge of the
68 said county court, to wit, Samuel J. R. Willson, judge, and Thomas M. Scott, associate judge of the county court of Wayne County, Illinois, by virtue of the power and authority given them, and said county court by the laws of the State of Illinois, and the said vote of the qualified voters of said Wayne County, as above set forth, and to carry into effect the order and determination of said county court, and above set forth, in respect to the swamp and overflowed lands of Wayne County, and also for the purpose of donating the said swamp and overflowed lands to the Mount Vernon Railroad to aid in its construction and maintenance, as before set forth; and also for the purpose of securing and for the payment of the said bonds, heretofore set forth and described, executed by the said Mount Vernon Railroad Company,
69 joined, connected, intersected, or consolidated in the manner as before stated, and to donate and dispose of said swamp and overflowed land to the last-mentioned railroad company for the purposes aforesaid, they, the said county court of Wayne County, in the manner and form as hereinafter described in an indenture of mortgage, did, under the hands and seals of said judges of said county court and the official seal of said court on the day and year last aforesaid, and for the purposes aforesaid, make, execute, and deliver to Isaac Seymour, of the city of New York, as trustee, an indenture of mortgage upon the swamp and overflowed lands of Wayne County, which lands so mortgaged or donated by virtue of said mortgage is in said indenture of mortgage, particularly described and set forth, a copy of which indenture of mortgage is hereunto annexed,
70 and which your orators pray may be taken and made part of this bill of their complaint. That, in and by said indenture of mortgage, said lands described in said mortgage, amounting, in the aggregate, to one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred acres preëmpted, were, by said county court, donated, granted, bargained, sold, remised, released, conveyed, and confirmed unto said Isaac Seymour, in trust for the first securing the payment of all the bonds and interest thereon as provided in and by said bonds, as said interest should become due and payable, and to enable said trustee to raise money by the sale of said bonds and said interest provided for in said bonds, and to enable said trustee to pay said the principal of said bonds when it should become due, in
71 aid of the construction and maintaining aforesaid railroad, and for the use and benefit of said Mount Vernon Railroad Company, together with all and singular the emoluments, income, and advantages, tenements, heriditaments, and appurtenances, thereunto belonging or in anywise appertaining, and the 'eversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law and in equity of the said county court and said county of Wayne, of, in, and to the same, each and every part and parcel thereof, with the appurtenances; that it was provided in said last-mentioned mortgage that all, and singular, the lands and tenements granted by said indenture, & each and every parcel thereof, be held, by said trustee and his successors as joint tenants, & not tenants in common, for the uses and purposes set forth in said indenture; and also, that
72 said lands be sold and conveyed in payment of the interest upon said bonds, as the same became due, and the principal of the same, when it became due, and for such other purposes as is described and set forth in said indenture; that, by said indenture, all the estate of said county court of the county of Wayne, and said Wayne

County, in the said lands and tenements set forth in said indenture was donated and conveyed as aforesaid, subject, however, to any and all equitys, said county court, Wayne County, and said last-mentioned railroad company, may have in the same; that said mortgage was duly acknowledged by the said judge of the county court, before clerk of said court, the 20 April, 1859, and certified thereto, by said clerk, under seal of said court, and such acknowledgments *and* certified to on the said indenture, and said indenture duly recorded in the office of
73 recorder of deeds of Wayne County, 6 day of , 1859, in book of mortgages B, on pages 341 to 358, inclusive, by the clerk of the circuit court of said Wayne County.

And your orators further show unto the court that said Mount Vernon Railroad Company, after its joinder, connection, intersection, or consolidation as aforesaid, laid out the line of railroad from the town of Ashley, in Washington County, Illinois, to the town of Mount Vernon, in the county of Jefferson, did purchase and did acquire the title to lands & real estate, in width one hundred feet, and lands for turnouts, switches, and depot-buildings from said town of Ashley to Mount Vernon. A particular description of said lands for said line of railway, turnouts, switches and depots is given in an exhibit hereto annexed and made part of this bill.

And your orators further show that, after the execution of the
74 said bonds, hereinbefore set forth, and after the execution and delivery of said mortgage by the said Mount Vernon Railroad Company, and after the execution of said indenture by the said county court of Wayne County, in the form & manner before set forth, the said trustee named in the said mortgages, & the said Mount Vernon Railroad Company sold a large amount of said bonds, for a valid consideration paid therefor by various parties the purchasers of the same; that from said original purchasers of said bonds, your orator John W. Kennicott became the bona fide owner and holder of the following bonds for the sum of five hundred dollars with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, and 254; and there is now due and unpaid on said bonds, twelve semi-annual installments of interest.

Your orator Thomas Upham is the bona fide owner and holder
75 of said bonds for one thousand dollars each, numbered 471, 460; & bonds for five hundred dollars each, numbered 113, 226, & 234; and that there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Ebenezer W. Stone is the bona owner and holder of the said bonds numbered 353, for the sum of five hundred dollars; and there is due and unpaid upon said bonds twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the bona fide owner and holder of the following-numbered bonds, for $500 each, No'. 45, 48, 40, 4, 373, 374; and, for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358, and 402, No'. 279, 280, 281, 282, 400; and there is due and unpaid upon said bonds twelve semi-annual installments of interest.

Your orator Austin Myers is the bona fide owner and holder of the following-numbered bonds, for the sums set to said numbers: 169
76 for $1,000; No. 91 for $1,000; No. 92 for 1,000; No. 93 for $1,000; No. 94 for $1,000; No. 95 for $1,000; No. 96 for $1,000; No. 276 for $1,000; Nos. 97 for $1,000; 98 for $1,000; 99 for $1,000; 100 for $1,000. Bonds numbered from 152 to 174, inclusive, of $1,000 each; also, bonds

numbered from 221 to 250, inclusive, for $1,000 each; on which bonds there is now due and unpaid twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the further owner and bona fide holder of the following bonds for one thousand dollars each, to wit, numbered 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406, 407, and 56; and bonds for $500 each, numbered 368, 366, 364, 362, 360, 358, 253, 43, 369, 365, 363, 361, 359; No. 19, No. 251, 355, 230, 93, and No. 267 for one thousand dollars; that there is now due and unpaid twelve semi-annual installments of interest on
77 each of said bonds; that there is now due a large amount of interest upon the coupons or interest warrants attached to each of the bonds held by your orators, and demand has been made for the payment of said interest.

And your orators would further show that, *with* the said railroad company, *now* said county of Wayne, or any persons for them, have made, or propose to make, any provisions for the payment of the interest due upon said bonds, or any part thereof, either at the place appointed in said bonds for the payment thereof, or at any other place; but, on the contrary thereof, have made default—by which default the conditions in each of the said indentures have become forfeited and absolute in said trustee or his successors in said trust for the benefit of your orators, & all others having and being the bona fide owners of said bonds.

78 And your orators further show that the moneys & considerations paid in the purchase of said bonds from said trustee and said company was to aid said railroad in its construction and maintenance; that your orators are informed that the whole amount of said bonds first above set forth have been sold by said trustee & railroad company, but your orators are ignorant, and do not know to whom said bonds were originally sold, or who are the present holders thereof. But your orators pray that any party or parties being holders and owners of any of said bonds may be permitted to be made parties complainants in this bill, upon such terms as to this court shall be just and equitable, and upon a proper application to this court for that purpose, & that when so made parties they have such relief as shall be equitable in the premises.

And your orators further show that, on or about the day
79 of , A. D. 186 , (the precise time is unknown to your orator,) the said Isaac Seymour, the trustee named in said deeds or mortgages, departed this life; that said Isaac Seymour, as trustee in said indenture, failed and neglected to perform all or any part of the trusts created by said deeds, and did not pay to your orators, by the execution of his trust, or in any other way, any of the bonds aforesaid, or any part of the interest due and unpaid thereon, but neglected so to do; nor has the said county of Wayne, or any person there for them, paid any part of said bonds, or the interest due and unpaid thereon.

Your orators further show unto this court that, by the death of said trustee, the trust created by said indenture has incapable of execution without the aid of the court in the premises.

Now, therefore, as your orators are *remindedless* at and by the
80 strict rules of common law, and can only have the proper relief in a court of equity, your orators ask that this court would take cognizance of the bill, and that the board of supervisors of Wayne County and the said Mount Vernon Railroad Company be made parties defendants in this bill; and that a subpœna in chancery be issued out of this court, directed to said defendants, & that they be required to answer all and singular the allegations of this bill, according to the rules

and practice of this court; and that they be specifically required to set forth and disclose a full and true account of whatever may have been done under the said indenture, and that an account may be taken of what may be due your orators upon the coupons or interest warrants aforesaid; that some proper and competent person be ap-
81 pointed to act as trustee in the performance of the trust created by said indentures, to exercise the same authority and power as said Seymour might have exercised under said indentures in the performance and execution of the trust in said indentures mentioned; and that he be compelled to execute said trusts under the authority and order of the *of the* court, or if it shall appear that your orators are entitled to a decree foreclosing said mortgages or deeds of trust, and are entitled to relief by a direct order for the sale of said lands mentioned in said indenture executed by the said county court of the county of Wayne, & a sale of the property and franchises set forth and described in said indenture, executed by said Mount Vernon Railroad Company, that such sale be ordered and decreed, or that your orators may have such other
82 and further relief as may seem to *to* your honor just and equitable in the premises; and your orators bring this bill in behalf of themselves and all other bona fide holders of any of the bonds issued as aforesaid and described in said indenture, who may in proper terms avail themselves of the decree made in this court.

HAY & WELDON,
Sol'rs for Comp'ts.

(Indorsed:) Filed Oct. 1st, 1866. P. P. Enos, cl'k.

Then, afterwards, to wit, on the twenty-second day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF WAYNE County, impleaded with the M't Vernon R. R. Co. } In chancery.

On this day come again the complainants, by their solicitors, and, on their motion, the defendants are ruled to answer herein by the first Monday of April next, and cause continued.

83 And afterwards, to wit, on the 12th day of June, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } In chancery.

Now come as well the complainants, by Messrs. Hay and Weldon, their

solicitors, as the said defendants, by Messrs. Freeman and Herndon, their solicitors; and, on motion of defendants, time to answer is extended to the first Monday in July next.

Now, afterwards, to wit, on the first day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT AND OTHERS
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, impleaded, &c. } In chancery.

Now, on this day, came again the parties, by their solicitors, and, on motion, the complainants have leave to file an amended bill by first day of August next; and the rule on said defendants to answer extended to the first day of October next; and this cause is continued.

84 Afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and seventy, came said complainants, by their said solicitors, and filed in said clerk's office their amendment to bill, which said third amendment to bill is in the words and figures following, to wit:

3rd amended bill.

In the circuit court.

UNITED STATES OF AMERICA,
Southern District of Illinois:

To the hon. judges of the circuit court of the United States for the southern district of Illinois.

Your orators, John Kennicutt, Thomas Upham, Ebenezer W. Stone,
Page 1, line 8. Joseph W. Ward, Austin Myers, John H. Brown and Cyrus
Line 10. Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, and Joseph Burnett,
85 who are citizens of the State of Massachusetts; Morris J. Earle, who is a citizen of the State of New Jersey; William L. Rolston, who is a citizen of the State of Ohio; and William R. Hodges, who is an alien and subject of her Majesty Victoria, Queen of Great Britain and Ireland, would respectfully represent unto your honors, that, on the 15th day February, A. D. 1855, the legislature of the State of Illinois, by an act entitled "An act to incorporate the Mount Vernon Railroad Company," approved on said day, enacted that all persons who should become stockholders under the provisions of said act, and their successors, became and were thereby created a body corporate and politic by the name of the Mount Vernon Railroad Company, with all the rights and powers incident and *and* necessary to such corporation. That, by the further terms of said act, it was provided that when an amount
86 equal to one thousand dollars per mile of the rout' of said road should be subscribed to the capital stock of said company, such sub-

scribers might meet at Mount Vernon and elect seven directors, and as many more from time to time as might be fixed by law.

And orators, by leave, refer to said act, and pray that the same be taken as a part of this amended bill of complaint.

Orators further show to your honors that, under authority of said act, an amount exceeding one thousand dollars per mile of the rout' of said road was duly subscribed, (being more than one thousand dollars per mile for the whole length of said road,) to the capital stock of said company; and the said body corporate was fully organized under said law, and president, secretary, treasurer, and board of directors were duly elected by the subscribers to said capital stock. That said corporate body was organized under the laws of the State of Illinois, and
87 was and is located in Illinois, and is a citizens' thereof.

Orators further show that said body corporate was created for the purpose of constructing and operating a railroad from Mount Vernon, in Jefferson County, in said State, to the Illinois Central Railroad or the Chicago branch thereof, in said State. That by the terms of the 7th section of said act, said company was permitted and empowered to borrow such sums of money as it might deem desirable, upon such terms as it might agree, for the carrying out of the objects of said act, and provide any securities said company might deem best, by bond, mortgage, or otherwise; that, by the terms of the 8th section of said act, the county court of said county of Jefferson was empowered to subscribe for such amount of the capital stock of said company as they might think proper, to issue bonds of said county and provide for the payment of the principal and interest thereof, by sale or mortgage, one or both, of the swamp and overflowed lands of said county,
88 and dispose of such bonds for money to pay, or in payment of, their subscription to said stock, all and each to be upon such terms, time, and in such mode as they might think best; or they might make such other dispositions of said swamp and overflowod lands in aid of the construction and maintenance of said road as they might deem best for the public interest of said county; that, by the 8th section of said act, it is provided that "Before any disposition is made of said swamp and overflowed lands, or any subscription to the stock of said company, the county court may, at any regular term of said court, order a special election to be held for the purpose of taking sense of the qualified voters thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and the returns thereof canvassed in all respects as other county elections. The county court shall prepare a proposition or propositions of the mode or modes, one or more,
89 containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in the constructing of said road, which said proposition shall be printed as an election ticket, and the voters may express their will in said proposition by writing "yea" & "nay" in said ticket. Those opposed to any and all propositions or plans may express their dissent by voting "nay" on a separate ticket. The proposition or plan having the highest number of voters shall be adopted by the county court, provided a majority of all the votes given in favor of the several propositions or plans, so submitted in aid of said road, shall be a majority of all the votes given at said election. That, by section 10 of said act, it is further provided, that any county through which said road may run, and any county through which any of the railroad may run with which this road may be joined, connected, or interseeted, may, and are hereby, authorized and empowered to aid in the construc-
90 tion of the same, or such other road with which it may so con-

nect; and for this purpose the provisions of the 7th, 8th, & 9th sections of this act shall extend, include, and be applicable to every such county & every such railroad.

Orators further show unto your honors that, by virtue of a certain other act passed by the general assembly of the State of Illinois, approved February 15th, 1855, entitled "An act to incorporate the Bellville & Fairfield Railroad Company," a certain other body corporate and politic was created for the purpose of constructing and maintaining a railroad from Belleville, in the county of St. Clair, in said State, and running from thence by Nashville, in Washington County, and Mount Vernon, in Jefferson County, to Fairfield, in Wayne County, in said State. That, under said act of incorportion, said company was afterwards fully organized, and a president, secretary, and board of
91 directors were duly elected. And orators beg to refer to said act, and that the same be taken as a part of this bill. And orators further show that, about the 19th day of November, A. D. 1855, a certain firm composed of Isaac T. Vanduser, Norman L. Smith, and Samuel L. Voorhees, doing business under the name of Vanduser & Smith, entered into a contract in writing with the county court of said Wayne County, (such contract being executed as and for said county court by S. J. R. Wilson, county judge, and Thomas M. Scott, associate judge of said county.) That, by the terms of said contract, said Vanduser & Smith agreed and undertook, on certain terms and conditions in said written instrument specified, to construct and put into operation a railroad from Mount Vernon aforesaid to the eastern boundary of Wayne County aforesaid, terminating on the old survey of the Alton, Mount Carmel & New Albany Railroad, or within one mile thereof. That,
92 by the further terms of said agreement, said county judge and associate judge, acting for and on behalf of said Wayne County, agreed to pay to said Vanduser, Smith & Co., for construction of said road, certain sums of money, which might be liquidated by the conveyance of certain lands belonging to the county of Wayne, at the rate of five dollars per acre.

And orators show that said contract was duly approved by said county court, at a special term thereof held in the month of December, A. D. 1858. And orators file herewith a copy of said written agreement, marked Exhibit "A," and pray that the same may be taken as a part of this bill. And orators further show that, about the time of the execution of said agreement, said Vanduser, Smith & Co. entered into an agreement with the Mount Vernon Railroad Company for the construction by said firm of the whole or some part of the said Mount Vernon Railroad; that said Vanduser, Smith & Co. entered upon
93 the construction of said railroad, agreed to be built by said firm with the said county court, but afterward ceased to prosecute said work, and assigned, and transfered to said Mount Vernon Railroad Company the said written contract with the county court of Wayne County aforesaid. That said Mount Vernon Railroad Company, in pursuance of a resolution passed by the board of directors, obtained from said Vanduser, Smith & Co. an assignment of both said contracts for construction, to wit, one with the said county court of Wayne County, and one with said Mount Vernon Railroad Company. And orators further show that before the20thday of April, A. D. 1859, that portion of the said Belleville and Fairfield railroad lying between Mount Vernon and the east line of Wayne County, was surveyed and located, and the said Mount Vernon Railroad was also surveyed and located from Mount Vernon westward to the Illinois Central Railroad; that the line

of said Mount Vernon Railroad, as surveyed and located, connected and intersected with the line of the Belleville and Fairfield Railroad as located, to wit, at Mount Vernon, and at said last-named place said roads became links in a chain of railroad connection, as contemplated and provided for in the charter of said Mount Vernon Railroad Company. And orators further show that, after the organization of said two railroad companies, under the charters aforesaid, to wit, about the month of April, A. D. 1855, the presidents and boards of directors of both companies met at the office of the Mount Vernon Company, in Mount Vernon aforesaid, and, by a mutual agreement of both companies, under and by virtue of the laws of the State of Illinois, the said roads were joined, connected, & intersected; and said roads were, by said agreements, so joined, connected, and intersected as to form one road from the east line of Wayne County to Mount Vernon aforesaid; that, by said agreement, both of said roads were joined, and said companies consolidated under the name of the Mount Vernon Railroad Company; and said boards of directors, and said companies did then and there elect a joint board of directors, and president, secretary, & treasurer, for said consolidated companies.

Orators further show unto your honors that, by reason of the connection and intersection of said Mount Vernon Railroad, and said Belleville & Fairfield Railroads, as originally chartered, and as surveyed and located; and also, by reason of the consolidation of said companies as aforesaid, the said county court of Wayne County, in the year A. D. 1855, acquired all the rights, powers, and privileges granted and specified in the 7th, 8th, 9th, & 10th sections of the charter of the Mount Vernon Railroad Company aforesaid, and had the right to aid in the construction of both, or either of said roads, and to dispose of the swamp and overflowed lands of Wayne County for that purpose, subject to the conditions and limitations of said sections; and by virtue of the power specified in said sections, said county court, in said year, A. D. 1855, became, and was, authorized to pledge or mortgage the said swamp lands of said county, to aid in the construction of either of said roads, by complying with certain conditions set forth in said Mount Vernon Railroad charter.

And your orators further show that said county, being desirous of aiding in the construction of a railroad across said county of Wayne, and said consolidated companies contemplating the immediate construction of each road, and said county being then the owner of a large quantity of lands, granted to said county by the State of Illinois, and to said State by the United States, and known as swamp and overflowed lands, by an order made and entered at a special term of said court, held on the 28th day of September, A. D. 1855, at Fairfield, in said county, directed a special election to be held in said county of Wayne, on the 5th day of November, A. D. 1855, for the purpose of taking the sense of the qualified voters of said county upon mortgaging or appropriating that portion of the swamp & overflowed lands situated in said county, and hereinafter described, to any company that would build a railroad through said county of Wayne; and the said county court did then and there order public notice of such special election to be given by advertisement, in accordance with the statute laws of said State of Illinois, and said notice was given in conformity with the terms and provisions of said order; and the said county court did prepare a proposition containing a brief, clear, and distinct idea of the plan proposed for aiding in constructing said road; and did cause the said proposition to be printed at large, as an election

ticket, and furnished to the qualified voters of said county, to be used at said election, in the words and figures following, to wit: "For
98 appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county." "Against the same." And said special election was duly held pursuant to said notice on the 5th day of November, A. D. 1855, and conducted in all things in conformity with the provisions of the aforesaid charter of the Mount Vernon Railroad Company, and the laws of the State of Illinois, and the returns thereof made, canvassed, & published in all respects as other county elections are to be, in and by said laws. Orators further show that said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at said election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" in favor of said proposition so to appropriate said lands; and upon the returns of said election being duly canvassed and published, the said county
99 court did adopt the plan or proposition carried as aforesaid, and did adjudge and determine to execute a mortgage upon said swamp and overflowed lands, for the purpose aforesaid. And orators further show unto your honors that, on the 20th day of April, A. D. 1859, said Mount Vernon Railroad Company, for the purpose of raising money to build and complete said railroad and branches, authorized by said act of incorporation, and for the purpose of purchasing iron and materials, and the payment of the expenses thereof, made and executed six hundred bonds, of one thousand dollars each, and four hundred bonds of five hundred dollars each, all made payable to Isaac Seymour or bearer, payable at the Bank of North America, at New York City, on the first day of May, A. D. 1874, with interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of May and November of each year, until said principal should be paid; and
100 that each of the said bonds had attached thereto coupons or interest warrants covering the whole amount of interest to become due till the maturity of said bonds, payable at the Bank of North America aforesaid, each of said coupons or warrants specifying the interest for one-half year, on the bond to which it was attached, and also the time when such half-yearly interest would become due and payable. That each of said bonds was duly executed by the president and treasurer of the said Mount Vernon Railroad Company, and the seal of said body corporate attached thereto, and each of said interest warrants so attached to said bonds was signed by the secretary of said company; that it was specified on the face of each of said bonds that full payment of the principal and interest of the whole issue of said bonds was secured by a mortgage bearing even date with said bonds to the said Isaac Seymour, as trustee, of one hundred thousand acres of land in Wayne
101 County, in the State of Illinois, granted by the State and county, for the purpose of constructing said railroad; that said one thousand dollar bonds were numbered from one to six hundred, both inclusive, and said five hundred dollar bonds were numbered from one to four hundred, both inclusive; and all said bonds were issued under a resolution passed by the board of directors of said Mount Vernon Railroad Company on the first day of March, A. D. 1859.

And orators further show unto your honors that the county court of Wayne County aforesaid, being desirous of aiding in the construction of a railroad running through said county, and said county being the owner of a large quantity of swamp and overflowed lands, (donated thereto by the State of Illinois as aforesaid,) resolved to mortgage and

pledge the same to secure the payment of the principal and interest of the bonds aforesaid; that, on the 20th day of April, A. D. 1859,
102 said county court had full authority in law so to dispose of said lands, such authority being derived from the following separate sources, to wit:

First. From the general public laws of the State of Illinois, then in full force.

Second. From the 7th, 8th, 9th, & 10th, sections of the aforesaid act incorporating the Mount Vernon Railroad Company aforesaid, and the connection and intersection of said road as surveyed and located with the Belleville and Fairfield Railroad, as surveyed and located.

Third. From the consolidation and union of the said two railroads aforesaid, as hereinbefore stated. And so being possessed of full authority in the premises, the county judge and one of the associate judges of the county of Wayne, did, on the 20th day of April, A. D. 1859, execute and deliver to the said Isaac Seymour, a certain deed of trust, and a certain mortgage to said Seymour, copies of which said deed of trust and mortgage are filed with the original bill in this cause, and
103 prayed to be taken as a part of this amended bill; that said deed and mortgage were, in fact, made for the purpose of securing the payment of the principal and interest specified in said bonds and interest warrants, aforesaid; and that said deed of trust and mortgage were so executed by said county judge and associate judge on behalf of said county, and by virtue of the lawful authority of said county court, so to dispose of said swamp and overflowed lands. Show that a special term of said county court, held in said month of April, A. D. 1859, that said mortgage and trust deeds were fully approved by said court, and became, and were, and are, in equity the deed of said Wayne County, and the same were duly acknowledged and filed for record in the office of the circuit clerk and recorder of said county, on the 3d day of May, A. D. 1859, and are duly recorded in said office; and said respondents, all and each, every of them, are required
104 to answer upon oath, specifically, to the best of their knowledge, information, and belief, whether said instrument *were* executed, and approved, and recorded, as aforesaid, and whether the said copies thereof, filed as exhibits herein, as aforesaid, are true and perfect copies of the same.

Show that said bonds being so executed, your orators became, severally, purchasers of a number of the same and of said interest warrants as set forth hereinafter in good faith, and for a good and valuable consideration, relying upon the security aforesaid; that neither said sums of money specified in said bonds, nor the sums specified in said warrants, or any part thereof, have been paid, but that before the commencement of this suit a sum greater than one year's interest on all the bonds, issued as aforesaid, had become due and payable, and still remains wholly due and unpaid.

Orators further charge, upon information and belief, that all bonds aforesaid have long since been disposed of by said Seymour or
105 said company, but orators do not know, and have no means of knowing, who are the holders or owners of any of said bonds except those held by orators; and orators pray that the holders of said bonds, or any of them, not joined in this proceeding as complainants, may be permitted, when discovered, to become complainants, and to have the relief herein prayed for upon such terms as to your honor shall seem just and equitable.

Orators further show that, before the commencement of this suit, but

at what exact time orators do not know, said Isaac Seymour departed this life; that, in his lifetime, said Seymour failed and neglected to execute the trusts created by said trust deed and mortgage, and did not dispose of any of such lands, or pay any part of said indebtedness as required by said instruments; that, by reason of the death of said Seymour, the said trusts have become incapable of execution without the aid of this court.

And orators file herewith copies of said trust deed and mortgage and pray that the same may be taken as a part of this bill;
106 that all the defendants be required to answer specifically the allegations of this bill according to the rules of practice of this honorable court.

And orators here set out the number, amount, and character of the bonds and interest warrants aforesaid held by each of your orators; that from original purchasers of said bonds, your orator John W. Kennicott became the bona fide holder and owner of the following bonds for the sum of five hundred dollars, with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, & 254; and there is now due and unpaid on said bonds, twelve annual instalments of interest.

Your orator Thomas Upham is the bona fide owner & holder of said bonds for one thousand dollars each, numbered 471, 460; & bonds for five hundred dollars each, numbered 113, 226, & 234; & that there is now due and unpaid on said bonds, twelve semi-annual instalments of interest.

Your orator Ebenezer W. Stone is the bona fide owner &
107 holder of said bonds, numbered 353, for the sum of five hundred dollars; & there is due & unpaid on said bonds twelve semi-annual instalments of interest.

Your orator Joseph W. Ward is the bona fide owner & holder of the following numbered bonds for $500 each, Nos. 45, 48, 40, 41, 374, 375; and for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358 & 402; and there is due and unpaid on said bonds twelve semi-annual instalments of interest.

Your orator Austin Myers is the bona fide owner and holder of the following numbered bonds for the sums set forth to said numbers:

No. 93 for $1,000.	No. 91 for $1,000.
" 94 " $1,000.	" 92 " $1,000.
" 95 " $1,000.	" 97 " $1,000.
" 96 " $1,000.	" 98 " $1,000.
"169 " $1,000.	" 99 " $1,000.
"100 " $1,000.	

Bonds numbered from 152 to 174, inclusive, of $1,000 each; also, bonds numbered from 221 to 250, inclusive, for $1,000 each; on which bonds there is now due and unpaid twelve semi-annual instalments of interest.

108 Your orator Joseph W. Ward is the further owner and holder of the following bonds for one thousand dollars each, to wit, numbers 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406; & bonds for $500 each, & 279, 280, 281, 282, 400; for $500 each, numbered 368, 366, 364, 362, 360, 358, 253, 43, 369, 19, 251, 365, 363, 361, 359, 355, 230, 93, and 267, 407; & 56, 276 for one thousand dollars; that there is now due and unpaid twelve semi-annual instalments of interest on each of said bonds; that there is now due a large amount of coupons, or interest warrants, attached to each of the said bonds held by your orators, and demand has been made for the payment of said interest.

Your orator John H. Brown is the bona fide owner and holder of the said bonds for one thousand dollars each, number' as follows, 119, 120, 144, 258, 344, 318, 319, 320, 322, 413, & 459; and for five hundred
109 dollars each, numbered as follows, 51, 52, 53, 54, 55, 56, 57, 58, 59, 247, 266, 268, 383, 385, 390, 391, 395, 97, 287, & 387, and the interest coupons thereto attached respectively; and there are now due and unpaid seventeen semi-annual instalments of interest on each of the said bonds, for which demands have been duly made.

Your orator Morris J. Earl is the bona fide owner & holder of the said bonds for one thousand dollars each, numbered respectively 495, 514, 553, 567, 570, 572 & 574; and for five hundred dollars each, numbered respectively 306, 305, 307, 308, & 309, and the interest coupons thereto attached respectively; and that there are now due and unpaid seventeen semi-annual instalments of interest on each of said bonds, for which demands have duly been made.

Your orator Cyrus Wakefield is the bona fide owner & holder of the said bonds for $1,000 each, numbered respectively 117, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193,
110 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 325, 326, 327, 342, 424, 425, 426, 427, & 429; and for five hundred dollars each, numbered 35, with the interest & coupons thereto attached; and that there are now due and unpaid nineteen semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

Your orator the said William R. Hodges is the bona fide owner and holder of the said bonds for $1,000 each, respectively numbered 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600; and for $500 each, numbered respectively 119, 126, 223, 233, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 255, 299, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 350, with the interest warrants or coupons thereto attached; and there are now due and unpaid twenty-eight semi-annual instalments of interest on each of
111 said bonds, for which demands have been duly made.

And your orator, the said William R. Hodges, further showeth that he is the bona fide owner and holder of certain other interest warrants or coupons nominally amounting to the sum of thirty thousand dollars; that the said warrants were originally attached to but are now detached from other of said bonds; that the payment of the said warrants was and is secured in like manner as aforesaid; that the same are now due and unpaid, and that demand has been duly made for the pay-
Page 20, end 10th line. ment thereof, which said warrants will be produced upon the hearing of this cause.

And orators pray that, on the final hearing herein, your honors will order, adjudge, and decree them an account to be taken of the amount due orators respectively on said bonds and warrants; that a trustee be appointed by the court to execute the powers conferred by said mortgage and deed of trust; that said trustee proceed to sell so much
112 of said lands as shall be required to pay the sums due orators, and that orators have such other and further relief in the premises as unto your honors may seem consistent with equity and good conscience. And orators will ever pray.

SCATES, McLERNDON & BROADWELL,
& HAY, GREENE & LITTLER,
Solicitors for Complainants.

(Indorsed:) Filed Jan'y 17th, 1870. J. A. Jones, cl'k.

Then afterwards, to wit, on the twenty-eighth day of May, in the year last aforesaid, came again said complainants by their said solicitors, and filed in said clerk's office their fourth amended bill, which said
113 fourth amended bill is in the words and figures following, to wit:

4th amended bill.

To the honorable judges of the circuit court of the United States within and for the southern district of the State of Illinois, in chancery sitting:

Your orator William R. Hodges who is an alien and subject of her Majesty Victoria, Queen of Great Britain, complaining, respectfully sheweth unto your honors, that your orator and John Kennicutt, Thomas Upham, Ebenezer Stone, John W. Ward, Austin Myers, John H. Brown, and Cyrus Wakefield, as co-complainants, did, on the seventeenth day of January, A. D. 1870, exhibit their amended bill of complaint in this honorable court in a certain cause pending on the chancery side thereof, against The Board of Supervisors of the County of Wayne, in the said State of Illinois, and the Mount Vernon Railroad Company, in the same State, defendants, and that said cause is still pending and unde-
114 termined in this honorable court.

And your orator further sheweth that he claims in and by the said amended bill to be the bona fide owner and holder of certain bonds and interest coupons, some of which coupons are attached to said bonds, and others of which are detached from like bonds, issued by the said Mount Vernon Railroad Company, and that the payment of the said bonds and coupons is secured by a first general mortgage on the railroad of said company, to wit, The Mount Vernon Railroad, and its rolling stock, franchise, and corporate property, and by a first mortgage and a deed of trust of 100,000 acres of land in said county of Wayne; which said mortgage and deed of trust are made exhibits in and by the original bill in said cause.

Sheweth that twenty-one of said bonds are of the denomination each of $1,000 00, and are numbered, respectively, 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600. That fifty-seven of said bonds are of the denomination each of $500 00, and are numbered respectively, 119, 126, 223, 233, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 247, 249, 255, 299, 310, 311, 312,
115 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340 341, 342, 343, 344, 345, 346, and 350, and that all of said bonds are of the same series, and are either of the denomination of $500 00, or $1,000 00, and bear interest at the rate of seven per centum per annum, payable semi-annually on the first day of May and November in each year, as will more fully and at large appear in this and in other pertinent and material respects by one of the said bonds of the denomination of $500 00, and numbered 299, and the interest coupons thereto attached, which said bonds and coupons are herewith filed as an exhibit, and prayed to be taken as a part of this supplemental bill.

Sheweth that the same number of coupons attached to the said exhibit is attached to each of the other of the said bonds, the numbers whereof are hereinbefore mentioned, that is to say, twenty-eight of said coupons are attached to each of said bonds.

Sheweth that the remainder of said coupons detached from
116 other like bonds as aforesaid and owned as aforesaid by your orator, nominally amounted to the sum of $30,000 00 or there-

about, and are of the same tenor and effect as the coupons attached to said exhibit, excepting that some of said detached coupons called for an amount of interest corresponding, at the rate of interest aforesaid, to the principal money specified in said bonds of the denomination of $1,000 00.

Sheweth that, during the pendency of this cause and since the last term of this honorable court, to wit, on the 17th day of March, A. D. 1870, all of the said bonds numbered respectively as aforesaid, together with the said coupons attached thereto, and the said coupons detached from other like bonds, the same then being still owned by your orator, were, together with the house in which they were then kept, totally and accidentally destroyed by fire, at Kenner, in the State of Louisiana; excepting however, three of said bonds, to wit, numbered respect-
117 ively 228, 229, & 230, which happened, at the time of said fire, to have been kept by your orator in another place than the said house destroyed as aforesaid; and excepting also, the said bond numbered 299, which had been previously left by your orator with his solicitors in this cause for their information, and which is herewith filed as an exhibit.

In consideration whereof and forasmuch as your orator is entirely remediless in the premises, except in a court of equity, where matters of this nature are properly cognizable and relievable, may it please your honors, that the said defendants may be required to appear and make true and perfect answer to all and singular the matters hereinbefore (in this supplemental bill) stated and charged, according to the best of their respective knowledge, information, and belief, (their oaths thereunto being hereby waived;) and your orator prays in this his said supplemental bill the same relief, both special and general,
118 prayed for by him and his said co-complainants in and by their said amended bill.

And he will ever pray, &c.

McCLERNAND & BROADWELL,
Sol's for said Complainants.

(Indorsed:) Filed May 28th, 1870. J. A. Jones, cl'k.

Now, afterwards, to wit, on the seventh day of July, in the year last aforesaid, came again said complainants, by their said solicitors, and filed in said clerk's office their fifth amended bill, which said fifth amended bill is in the words and figures following, to wit:

119 *5th amended bill.*

Of the June term of the circuit of the United States for the southern district of Illinois.

Amend by inserting in 3rd amendment to the bill, page 1, lines 8 & 10, the names and citizenship of following parties:

JOHN W. KENNICOTT ET AL.
v
THE BOARD OF SUPERVISORS OF WAYNE County & others.
} In chancery. Bill to foreclose.

Insert at page 20 and at end of 10th line the following paragraph:

Your orator would further represent that Charles E. Jackson is the

bona fida owner & holder of the following bonds with interest coupons attached, viz, bond No. 11 for $1,000, and bonds Nos. 207 & 229 for $500 each, and upon which interest remains due for the past ten years & more, and unpaid; and that he purchased said bonds for a fair and valuable consideration in the due and regular course of trade.

Your orator would further represent that the said John S. Smith is the bona fide owner and holder of the following of said bonds, viz,
120 bond No. 49 for $500, with the coupons attached, and upon which interest remains due and unpaid for more than ten years past; and that he purchased said bonds for a fair & valuable consideration in due course of trade.

Your orator would further represent that the said Henry V. Davis is the bona fide owner & holder of the following bonds and coupons attached, purchase' in due course of trade for a fair and valuable consideration, and upon which interest remains due & unpaid for more than ten years, to wit, bond No. 210 for ($500) five hundred dollars.

Your orator would further represent that John L. Priest is the owner & bona fide holder of the following of said bonds with interest coupons attached, purchased in due course of trade for a fair and valuable consideration; and upon which interest remains due and unpaid for more than ten years, that is to say, bond No. 42 for five hundred dollars, ($500.)

121 Your orator would further represent that the said William C. Plunkett is the bona fide owner & holder of the said bonds numbered 61 and 376 for one thousand dollars each, with the interest coupons attached, and which interest remains due and unpaid for more than ten years past; and which said bonds he purchased in due course of trade for a fair and valuable consideration.

Your orator would further represent that the said John L. Dixwell is the bona fide owner & holder of said bonds numbered 18 & 53 for $1,000 each, and Nos. 4, 79, 134, 227 for $500 each, with coupons for interest attached, and which interest remains due and unpaid for more than ten years, and all of which said bonds were purchased in due course of trade for a fair & valuable consideration.

Your orator would further represent that Joseph Smith is the bona fide owner & holder of bonds numbered 12, 13, 22, & 30 for $1,000 each, with the interest coupons attached, and which interest now re-
122 mains due and unpaid for more than ten years, and that he purchased said bonds in the due course of trade for a fair & valuable consideration.

Your orator would further represent that the said Arthur F. Gould is the bona fide owner & holder of twenty-three (23) of the coupons detached from part of the said 800 bonds so issued and negotiated by the said railroad company, and which said twenty-three coupons were detached from said bonds by the bona fide owner & holder of said bonds after the said coupons had become due and payable by the terms thereof for the sum of seventeen $\frac{50}{100}$ dollars each, ($17 50) and sold & delivered to said Gould in due course of trade for a valuable consideration; and which said interest remains due & unpaid, & every part thereof, amounting to the sum of four hundred & two $\frac{50}{100}$ dollars ($402 50.)

Your orators further represent that the said Andrew H. Ward is the bona fide owner & holder of bonds numbered 209, 229, and 257 for $500, and bond No. 11 for $1,000, with the interest coupons attached,
123 and which said interest remaining due and unpaid for more than ten years last past; said Ward purchased said bond in the due course of trade for a valuable consideration. Said Ward is also the bona

fide owner & holder of interest coupons, detached from a part of the said 800 bonds so issued & negotiated by the said railroad company, for the aggregate sum of one thousand and fifty dollars, ($1,050 00,) and which said interest coupons were detached from said bonds by the bona fide owner & holder thereof after the said coupons had become due & payable by the terms thereof; and which were sold & delivered to the said Ward in due course of trade for a fair & valuable consideration, & which said interest remains due & unpaid.

Your orators further represent that the said Joseph Burnett is the bona fide owner and holder of *three* of said bonds numbered 62 & 466, for one thousand dollars each, with the interest coupons thereto attached, and which interest remains due & unpaid for more than ten years *paid;* said bonds were purchased by said Burnett in due
124 course of trade for a fair and valuable consideration.

Your orator would further represent that said William L. Rolston is the bona fide owner & holder of said bonds numbered 375 & three hundred & eighty-four (384) for $1,000 each, and bonds Nos. 44 & 50 for $500 each, with the interest coupons attached to each of said bonds, and upon each of which interest remains due & unpaid for more than ten years past; and all of which said bonds were purchased by said Rolston for a fair & valuable consideration in the due course of trade.

Your orators further represent that William P. Emerson is the owner & bona fide holder of bonds Nos. 471, 460, & 116 for $1,000 each, & bonds Nos. 226, 224, 113 396, 214, 215, 248, 11, 10, & 100 for $500 each, with coupons attached, on which interest remains due & unpaid for more than ten years; and all which were purchased in due course of trade at a fair & for a valuable consideration.

125 Your orators further represent and aver that the said Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, William P. Emerson, and Joseph Burnett are, respectively, residents in and citizens of the State of Massachusetts; and said William L. Rolston is a resident in and a citizen of the State of Ohio, in the United States of America.

(Indorsed:) Filed July 7th, 1870. J. A. Jones, cl'k.

And afterwards, to wit, on the 7th day of November of the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF WAYNE County and others. } In chancery.

126 This day came again, as well the complainants as the defendants herein, by their solicitor; and, on motion of the complainants, leave is granted to amend their said bill and amended bill by striking out the names of Thomas Upham and Charles E. Jackson as parties complainants herein.

Petition to amend bill.

And afterwards, to wit, on said seventh day of November of the year

last aforesaid, came again William R. Hodges, one of the complainants herein, and filed in said clerk's office his petition to amend the bill of complaint herein, which said petition is in the words and figures following, to wit:

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al. } Bill in chancery, &c.

127 In the circuit court of the United States within and for the southern district of Illinois.

To the Hon. S. H. Treat, judge, &c., in chancery sitting:

Your orator William R. Hodges, by leave of the court, &c., comes and amends the bill herein by showing to the court that, in addition to the bonds and coupons in said bill described as being owned by your orator, he is the owner and bona fide holder, for a valuable consideration, of the following-described coupons, detached from bonds issued and sold as set forth in said bill, to wit:

1st or "No. 1" coupons of $35 00 each, from $1,000 00 bonds:

200 coupons from bonds of Nos. 401 to 600, inclusive, due Nov'r 1st, 1859, 35 00 each	7,000 00
45 do. do. *from* bonds Nos. 356 to 400, inclusive, 35 00 each	1,575 00
41 do. do. 301 to 303, 314 to 337, 342–355, all inclusive, 35 00 each	1,435 00
10—Nos. 125, 131, 132, 133, 218, 219, 347, 348, 349, & 450—@ 35 00 each	350 00
Total, 296 1st coupons, due Nov. 1st, 1859, @ 35 00	$10,360 00
296 2d do. from same bonds & numbers, due May 1st, 1860	10,360 00
130 3rd do. from bonds Nos. 451 to No. 580, inclusive, @ 35 00 each, due Nov. 1, '60	4,560 00
128 Total, 722 coupons of 35 00 each, value	25,270 00

No. 1 coupons from $500 bonds:

58 coupons from bonds Nos. 2 to 59, inclusive.			
142 " " " " 259 " 400,			
37 " " " " 118 " 134, "			
51 " " " " 207 " 258, "			
2 " " " Nos. 1 & 200			
290 No. 1 coupons, due Nov. 1st, 1859, @ $17 50 ea			5,175 00
290 " 2 " same Nos., May 1st, 1860, "			5,175 00
130 3rd do. Nos. 1 to 29, inclusive	29		
" 51 59, "	9		
" 260 286, "	27		
" 291 298, "	8		
" 351 400, "	50		
" 239, 347, 348, 449, 450, 317, 336	7		
		130 17 50	2,275 00

3 4th do., Nos. 255, 256, 317.....	17 50	52 50
Total, 743 coupons, @ 17 50		
Total value, without interest.....		$37,947 50

All of which your orator prays may be decreed him, &c.

McCLERNAND & BROADWELL,
Sol's for Hodges.

Filed November 7th, A. D. 1870. J. A. Jones, clerk.

129 Afterwards, to wit, on the seventh day of December, in the year last aforesaid, came again said defendants, by their said solicitors, and filed in said clerk's office their answer to complainant's bill of complaint, which said answer is in the words and figures and following, to wit:

Answer of Board of Supervisors of Wayne Co.

The answer of the Board of Supervisors of Wayne County, Illinois, to a bill exhibited in the circuit court of the United States for the southern district of Illinois, in which said bill John W. Kennicott, Thomas Upham, Ebenezer W. Starne, Joseph Ward, and Austin Myer are complainants, John H. Brown, Cyrus Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Woodard, Joseph Burnett, and William L. Rolston, and in which your respondents and the M't Vernon Railroad Company are defendants.

130 Your respondents, for answer to so much of said bill as they are advised it is necessary for them to answer, say: That they have no personal knowledge in relation to the passage of an act by the legislature of the State of Illinois creating or providing for the creation of M't Vernon Railroad Company, nor as to the organization of said company, nor as to the issuing of bonds and the making of a mortgage by said company to secure the payment of said bonds, as said facts are alleged in said bill; but they have very little doubt, from general information, as to the truth of said several facts alleged; but, for greater certainty, they call upon said complainants for strict proof each and all of said allegations; and especially do they protest against the right of the said railroad company to commit or affect the rights or interests of Wayne County in and to the swamp lands in said bill referred
131 to, by anything said or done by said railroad company in said bonds or mortgage.

Your respondents, further answering, say that they believe the said complaints in their bill have truly, and in effect, set forth the provisions of sections 7, 8, and 9 of the said act of the legislature of the State of Illinois, entitled "An act to incorporate The Mount Vernon Railroad Company," approved Feb'y 15, 1855; but for greater certainty they refer to said three sections of said act, which, they pray, may be taken as a part of this their answer.

Your respondents, further answering, say that, at the time of making the mortgage set forth in said bill, and purporting to be the mortgage of Samuel J. R. Wilson, county judge, and Thomas M. Scott, as the

county court of Wayne County, and bearing date the 20th day of April, A. D. 1859, the said Mount Vernon Railroad was not located, did
132 not run, and there was no authority nor right to locate or run it through the said county of Wayne.

They further deny that, at that time, there was any other railroad running through said county of Wayne, with which said Mount Vernon Railroad was joined, connected, or intersected; that said Mount Vernon Railroad did not then connect with any railroad in said county of Wayne.

They expressly deny that said Mount Vernon Railroad was ever consolidated with any railroad running through said county of Wayne.

They deny that it was ever consolidated with the Belleville and Fairfield Railroad.

They deny that the Belleville and *and* Fairfield Railroad Company was ever organized, or that any route for their railroad was ever selected by said company, as provided in their act of incorporation.

Your respondents, further answering, deny that the county
133 court of Wayne County ever subscribed for any stock in said Mt. Vernon Railroad Company, or authorized any person to do so for them.

They deny that, at any regular or special term thereof, said county court ordered a special election to be held for the purpose of taking the sense of the qualified voters of said county of Wayne in relation to disposing of the swamp and overflowed land of Wayne County to aid in the construction of said Mt. Vernon Railroad.

They deny that the county court of said county of Wayne, before the executing of said mortgage, or since, presented a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in constructing of said Mt. Vernon Railroad, or printed any such proposition as an election ticket that the voters of said county of Wayne might express their will at large on said proposition by writing "Yea," or "Nay," on said ticket.

134 They deny that said county court of Wayne County ever, at any time, prepared and submitted to the qualified voters of Wayne County any distinct idea of any plan or plans for aiding in the construction of said Mt. Vernon Railroad, as required by the letter or spirit of said sections 7, 8, and 9 of said act of the legislature.

They further deny that the county of Wayne ever executed, or authorized any person to execute, said mortgage, which is sought to be enforced by said complainants against said county by said bill.

They deny that the county court of Wayne County ever executed any such mortgage, or, if they did, that they had any authority to do so, from the qualified voters of said county.

They deny that said exhibit, claimed in said bill as the mortgage of Wayne County, purports or professes to be the act of Wayne County, or of the county court of Wayne County, but is only the act of the said Samuel J. R. Wilson and Thomas M. Scott.

135 These respondents further charge that said complainants well knew at the time they took the bonds that there was no railroad running through the said county of Wayne with which said Mt. Vernon Railroad joined, connected, or intersected; in fact, that said Mt. Vernon Railroad joined no railroad running through, or even partly through, said county of Wayne. They well knew that the county court of Wayne County had never submitted to the voters of Wayne County for their *asserting* proposition for a plan to aid in the construction of said Mt. Vernon Railroad, as required by said sections; they well knew that the

county of Wayne had never executed or authorized the execution of said mortgage; that the county court of said county of Wayne had never executed said mortgage; and, in a general way, were well informed, and had notice that every material fact was wanting authorizing or justifying the county court of Wayne County in conveying or mort-
136 gaging said swamp and overflowed lands, in pursuance of the provisions of said sections 7, 8, and 9; they well knew that there was no law of the State of Illinois authorizing the county court to mortgage or convey the swamp lands; that, although said sections might, under the contemplated circumstances, provide for conveying or mortgaging, yet such deed or mortgage could only, under the law, be executed by the clerk of the county court, under the seal of the county.

These respondents deny expressly and specially that, at the time of the passage of the act providing for the construction of the M't Vernon Railroad, to wit, on the 15 Feb'y, 1855, *that* there was a line of railroad laid out and established in and through said county of Wayne by the Belleville and Fairfield Railroad Company, was organized with all necessary and proper officers, as required by their charter.

They deny that, on the 30th day of April, 1855, or any other time, *that* the board of directors of said two companies, and their secretaries
137 met at the office of the M't Vernon Railroad Company, in the town of M't Vernon, or elsewhere, and by a mutual agreement of the said two railroad companies, and by virtue of the law of the State of Illinois, joined, connected, intersected, and consolidated said two railroads, or that no such meeting or agreement was then, or at any other time, done, had, or made, either in spirit, letter, or effect, so as to consolidate them into one, or in anywise to join, connect, or intersect them; that no board was ever elected or organized, of a new road made out of the two, and with the name as stated in said bill. They specifically deny that any such joinder, connection, or intersection of said roads was ever made, so as to justify or authorize the county court of said county of Wayne to execute said mortgage, or to make that or any other disposition of said swamp lands.

They deny that, before the pretended execution of said mortgage,
138 the county court of Wayne County, at any term of said court, held at the court-house in the county of Wayne for that purpose, by the judges thereof, did order and dispose of the swamp and overflowed lands, the property of said county, or order and decree that the county court of Wayne County execute and deliver to said M't Vernon Railroad a mortgage and deed of trust of said lands, as security for the payment of said bonds, or to aid in the construction and maintenance of said railroad.

They deny that said county court, on the 28th day of Sept., 1855, ordered a special election, taking the sense of the legal voters of Wayne County upon the mortgaging the swamp and overflowed lands in said county for the purpose of aiding in the construction and maintenance of the said M't Vernon Railroad, in pursuance of said sections 7, 8, and 9, as alle*d*ged in said bill, or that they did propose a plan, as
139 stated in said bill, of any distinct idea of a plan, for aiding in the construction of said road, or that any election was held to vote upon such plan submitted in pursuance of said act, or that there was any vote or majority at said election for any such plan as is stated in such bill.

These respondents submit herewith a copy of the order of said court, referred to in said bill, which order they make a part of this, their answer; and they charge that said order did not propose a distinct idea

of a plan to aid in the construction of said railroad, or any other specified railroad, but was only to test the sense of the voters of said county whether they would devote the swamp land to building railroads, or some other purpose; it was only intended to settle a question as to a general fe'ling, and not to propose any specific plan or idea for the construction of any particular road or roads.

These respondents again specifically deny that the county court of Wayne County, by said proceeding, became authorized to make
140 said mortgage, or any other, or that, in consequence thereof, they determined to do so.

They deny that the county of Wayne, or the county court of said county, ever in open court executed said mortgage, or authorized any person to execute said mortgage. They deny that the official seal of said county was ever affixed to said mortgage; that the said Samuel J. R. Wilson and Thomas M. Scott may have executed said mortgage, but they had no authority to do so, and that their act is null and void as to said county; and they deny that by said mortgage said swamp land was donated, granted, bargained, sold, remised, released, conveyed, and confirmed to said Seymour for any such trusts as were set forth in said bill.

These respondents do not know whether or not said M't Vernon Railroad Company laid out their line of road to Ashley, and acquired
141 the right of way or not, as is alle*d*ged in said bill, or whether, after the execution of said mortgage, bonds were issued and sold, as therein alle*d*ged, or whether said complainants purchased of said bonds, as alle*d*ged in said bill, but they call upon complainants for strict proof of all said facts.

They deny that any part of said railroad has ever been built, but on the contrary, has been entirely abandoned, and the county of Wayne received no consideration whatever for said mortgage. It is true, as stated, said county has failed, and still fails, to pay or to provide for the payment of the interest upon any and all of said bonds, not believing said county to be under any legal obligation to do so.

Respondents further state that all of the allegations in complainants' bill not especially answered or avoided, are hereby positively denied. And now, having fully answered all they are advised is necessary and proper should be answered, ask to be discharged hence, with their reasonable costs.

BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS.

142 Attest:
[L. S.] OLIVER HOLMES,
County Clerk.

143 *Exhibit to answer.—See page* 164.

October special term, A. D. 1855.

At a special term of the county court, begun and held at the court-house in Fairfield, on Saturday, the 13th day of October, A. D. 1855—present Hon. D. Turney, co. judge; Hon. Sam'l Hooper, associate.

Whereas, at a meeting of the citizens of Wayne County, held at the court-house in Fairfield, on Saturday, the 6th inst., for the purpose of taking into consideration the subject of our swamp lands as a bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair, and appointing Thomas Lowery,

secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way, therefore—

Resolved, That the said county court be requested to order a vote "For a railroad" and "Against a railroad," and if the majority
144 of the vote in the county be cast for a road, the said county court shall give our swamp lands, or such part thereof as shall be necessary to secure the building of a railroad through Wayne County.

It is therefore ordered that the clerk of this court be required to advertise for a poll to be opened at the different precincts of Wayne County, at the ensuing November election, that the electors may vote for a railroad and against a railroad in pursuance of the foregoing resolution.

Ordered that court adjourn until court in course.

D. TURNEY.
SAMUEL HOOPER.

STATE OF ILLINOIS, *Wayne County, ss:*

I, Oliver Holmes, clerk of the county court in and for said county, and custodian of the records of said court, do hereby certify that the foregoing is a true and correct copy of all the proceedings had at the October special term, A. D. 1855, of the county court in and for said county, as appears on the records of my office.

145 Witness my hand and the seal of said court affixed at Fairfield this November 2nd, A. D. 1869.

L. S.] OLIVER HOLMES, *Co. Cl'k.*

It is agreed that the within may stand as the answer to the bill, as amended Nov. 7, 1870.

(Sign'd) GOODWIN, LARND & TOWLE,
For Complainants.

(Indorsed:) Filed Dec'r 7th, A. D. 1869. J. A. Jones, cl'k.
(Indorsed:) Refiled November 7th, 1870. J. A. Jones, cl'k.

Afterwards, to wit, on said seventh day of November, of the year last aforesaid, came again said complainants, by their said solicitors, and filed their replication to the defendant's answer herein, which said replication is in the words and figures following, to wit:

146 *Replication to def't's answer.*

United States circuit court, southern district of Illinois, ss.

In chancery.

The replication of John W. Kennicot & others, complainants, to the answer of The Supervisors of Wayne County, of Illinois, defendant.

These repliant', saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the

law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver, maintain, and prove, *and* this honorable court shall direct. And humbly pray, as in and by their said bill they ha already prayed.

GOODWIN, LARNED & TOWLE,
Solicitors for Complainants.

147 HAY, GREENE & LITTLER,
Of Counsel for Comp'ts.

McCLERNAND & BROADWELL,
Sol's for Compl'ts.

W. B. SCATES.
Sol's & of Counsel for Compl't.

Filed November 7, A. D. 1870. J. A. Jones, clerk.

And heretofore, to wit, on the 7th day of July, in the June term of said court of the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY et als. } In chancery.

This day came again the parties, by their solicitors, and, by agreement, leave is granted to complainants to amend bill, and this cause set for hearing on the first Monday of November next.

148 *Agreement between Norman A. Smith et al. and Barnard L. Voorhees.*

Articles of agreement made and entered into this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-eight, between Norman A. Smith, of the city of Troy, New York, Isaac T. Van Duser, of Versailles, Illinois, and Barnard L. Voorhees, of the city of St. Louis, Missouri, doing business under the name, style, and firm of Van Duser, Smith & Company, party of the first part, and the County of Jefferson, in the State of Illinois, party of the second part, and Joel Pace, trustee of the Mount Vernon Railroad Company and of said County of Jefferson, party of the third part, and John C. Gray, Hezekiah B. Newby, Zadok Casey, Willis Duff Green, Harvey T. Pace, Angus M. Grant, Joel Pace, Tazewell B. Tanner, William B. Anderson, William H. Herdman, Stephen T. Strattan, John R. Allen, and John S. Bogan, P. Grant, James Westcott, Thompson Angler, party of the fourth part, witnesseth:

149 That, whereas by deed bearing date on the 11th day of June, 1856, between the County of Jefferson, party of the first part, and the Mount Vernon Railroad Company, party of the second part,

and Joel Pace, as trustee, certain lands and real estate therein described were conveyed by the said County of Jefferson to the said Joel Pace, for the uses and purposes, and on the trusts therein expressed, that is to say, for the purpose of building a railroad from Mt. Vernon, in Jefferson County, to some point on the Illinois Central Railroad, or the Chicago branch, one or both, upon the terms and conditions therein set forth to be performed:

And whereas the said party of the first part have agreed, and by these presents do covenant and agree, to build, and equip, and operate a railroad from Mt. Vernon aforesaid to Ashley, on the Illinois Central Railroad, as hereinafter set forth:

150 And whereas in order to enable said party of the first part to construct and finish said railroad, it is necessary to transfer to them all the privileges and corporate powers in the act of incorporation of said Mt. Vernon Railroad Company contained, together with all the stock, property, rights, and credits, belonging or in any wise appertaining to the same, in consequence of which it has become impracticable for the said party of the first part to enter into an agreement and covenants with the said railroad company to build, equip, and run said road, as was contemplated in and by said deed of trust; but it has become necessary that said contract and agreements for the objects and purposes of said deed of trust should be entered into with the County of Jefferson, and the other parties hereto, in order to carry those objects and the provisions of said deed of trust into full effect:

151 And whereas it is provided by an act entitled An act to amend an act to incorporate the Belleville and Fairfield Railroad Company and to change its name, that the several railroads therein named may be and become consolidated upon the terms and conditions, and in the mode therein provided, under the name of the St. Louis and Louisville Railroad Company, for the purpose of building a through line from Saint Louis to Louisville:

And whereas it is very desirable to the people of the several counties along the line of said proposed railroad, and especially to the citizens of the county of Jefferson, in the State of Illinois, that the same should be constructed through the State of Illinois:

And whereas the County of Wayne, in said State, has made a donation of certain lands of said county to certain individuals, for the purpose of accomplishing the same object in part:

152 And whereas the said party of the first part have entered into a negotiation with the said County of Wayne, and the said persons to whom said lands have been conveyed by said county, for the purpose of extending the construction of the line of said railroads from Mt. Vernon, in Jefferson County, to the eastern boundary of Wayne County, in said State of Illinois, which said negotiation is still pending at the ensealing and delivery of this agreement:

And whereas, in the event of an agreement being made between the said party of the first part and said County of Wayne, for said extension, it is desirable that that part of the road herein provided to be built, should become part and parcel of a through line, and of the line of said extension, and that the said Mt. Vernon Railroad Company should become consolidated with the other railroads, as provided

153 in said above-recited acts, so far as the same may become practicable:

Now, therefore, to the intent to carry all or as many of those objects into full effect as may be practicable—

It is covenated and agreed by the said party of the first part, to

and with the said party of the second part, and the said party of the fourth part, that, for and in consideration of the covenants and agreements on the part of the parties of the second, third, and fourth parts, and the payments hereinafter expressed to be made, they agree, covenant, and bind themselves, that they will commence the construction of said line of railroad at some convenient point at, in, or near to Ashley, on the Illinois Central Railroad, in Washington County, Illinois, or at some convenient point on the line, within thirty days from the sealing and delivery of this agreement; and that they will, with all convenient dispatch, prosecute, finish, and complete the same to
154 Mount Vernon, in Jefferson County, in a substantial and workmanlike manner, and equip and operate the same between said two points within fifteen months from the commencement. That they will furnish all the necessary means and materials to construct, finish, and complete a first-class railroad in all and every respect whatsoever, and of "T" rail of not less than forty-five pounds weight to every lineal yard of the main track; and they will furnish and cause to be furnished, and kept and provided at all times, as many locomotives, passenger, freight, house, and platform cars as may be demanded by and required to transact all the business presented to be done on the same at the several depots and stations along the line, and run at least one train each way every day; that they will erect as many depots, freight-houses, and stations as may be necessary for the conven-
155 ience of the public business, with sufficient side track for that purpose.

For and in consideration of the covenants and agreements on the part of the party of the first part to be performed, it is covenanted to and with the said party of the first part, as follows, that is to say, whenever and as often as the said party of the first part shall have built and completed the grade, including masonry and bridging, on a section of three miles of said railroad line, then the said party of the second part agrees and hereby consents that the said party of the third part shall thereupon immediately convey to the said party of the first part, two thousand acres of said county lands so conveyed to and held in trust by him to and for said railroad purposes, by good and sufficient warrantee deed, as such trustee. And the said party of the third part hereby covenants and agrees that then and in that case he will, as such trustee,
156 convey to said party of the first part, by warrantee deed as such trustee, two thousand acres of said lands so held in trust. And the said party of the fourth part do covenant and agree that they will pay to said party of the first part the sum of two thousand dollars for every such section of three miles of grade, including culverts and bridges so finished and completed as aforesaid; and so on from time to time as sections of three miles as aforesaid shall be finished, said party of the second part consents to a further conveyance of two thousand acres, and said party of the third part will make further like conveyance of two thousand acres; and said party of the fourth part will pay a further sum of two thousand dollars to such party of the first part, until the whole of said grade, &c., shall be finished and completed from Ashley to Mount Vernon as aforesaid. And the said party of the fourth part do further covenant and agree that the said several persons who have sub-
157 scribed labor as donations towards building said railroad, shall and will perform the same in the time and manner required by the said party of the first part, or their agent, upon receiving thirty days' notice of the time when the same is wanted, and in case of default on the part of said subscribers, or either of them, to perform said labor as above

provided, then the said parties of the fourth part will render and pay to the said party of the first part, at the rate and price of fifteen dollars per month for every month so subscribed and in default. And it is agreed between the said parties of the said first and fourth parts that the whole amount of labor so subscribed & to be performed or accounted for is forty-eight months.

It is further agreed between the said party of the first part and the said party of the fourth part, that the whole amount of mon*ies*
158 subscribed by individuals to be paid as a donation towards building said railroad is eleven thousand dollars; which said party of the fourth part agree and bind themselves to *to* cause to be collected and paid over to the said party of the first part, in said sums of two thousand dollars as aforesaid for every section of three miles of grade, &c., so finished as aforesaid.

And it is further understood and agreed that, upon the completion of the last section or part of section of said grade, the said party of the fourth will pay over the balance of said subscription of eleven thousand dollars.

It is further agreed and understood by the said parties of the second, third, & fourth parts that, upon the said party of the first part giving security to the satisfaction *to* the said party of the second part, that then the said party of the third part may *may* and shall convey to
159 the said party of the first part the remainder of the county lands described in said deed of trust, by like warranty deed; and also all other lands that may have been given by individuals as a donation towards the building of said railroad. And the said party of the fourth part do hereby covenant and agree to and with the said party of the first part, that the remainder of said lands so to be conveyed as aforesaid, or as hereinafter expressed, shall amount, together with the amount so to be conveyed as hereinbefore provided, upon the completion of the grade, &c., as aforesaid, to twenty-four thousand acres, and no more. It is understood and agreed by and between said parties that no part of the lands described in said deed of trust, upon which pre-emption' have been allowed or to which the county had no title, shall be so conveyed as any part or portion of said remainder or of
160 said twenty-four thousand acres; but it is agreed that the amount so to be conveyed in the whole, shall not be less than twenty-four thousand acres including the amount so to be conveyed in part payment for said grade.

It is further agreed and understood by and between the said parties that, in case said party of the first part do not give security and take a conveyance in advance of the completion of any part of the superstructure, that the remainder as aforesaid so to be conveyed, shall be conveyed in the following proportions, that is to say: Upon the laying down and completing the superstructure of one mile of said railroad, the said party of the second part consents as aforesaid; and the said party of the third part agrees to convey, as aforesaid, such a proportion of the said remainder so to be conveyed as one mile may bear to
161 the whole length of said line; and upon completing said superstructure, the balance of said lands so to be conveyed, shall be so conveyed as before provided.

It is further covenanted and agreed by and between the said parties of the first, second, and third parts, and the said parties of the first, second, and third parts do hereby covenant and agree, to alter, change, modify the provisions of the said deed of trust, so as to extend the time for the completion of said railroad until the first day

of March, 1860; and that the conveyance of portions of said land mentioned in said deed of trust may be made as provided in this agreement, and at the several times herein agreed upon.

It is further covenanted and agreed between the several parties that, in case the said party of the first part shall be enabled and desirous to make sale of any part of said lands so to be conveyed before
162 they are entitled to conveyances therefor, and shall enter into contracts therefor at the rate of five dollars an acre or more, the said several parties of the second, third, and fourth parts will consent to and cause the same to be conveyed to the proposed purchaser thereof, of any one or more of said tracts, upon such purchaser executing notes to the said party of the third part, as such trustee, with a mortgage upon said tract or tracts so conveyed to secure the said purchase-money; and which said notes and mortgages, or the proceeds thereof when collected, shall be held on like trust, and transfer'ed, assigned, and paid over to said party of the first part upon the like terms, conditions, and at the time hereinbefore provided for the conveyances of the lands themselves, as portions of said work may be from time to time finished and completed as aforesaid.

163 It is further covenanted and agreed by the said party of the fourth part, that they will procure and cause to be conveyed a right of way one hundred feed wide on such line of location as may be adopted by the said party of the first part, so far as the same can be procured by donation or purchase; and in case the owner on any part of the line will not donate or voluntarily sell the same, and the same is taken by condemnation, the said party of the fourth part will pay all damages, and the expenses and costs of the condemnation, and save and keep said party of the first part harmless and free of expenses or costs on account of the same.

And they further covenant and agree to procure in like manner by purchase or condemnation, and alike free of expense, a quantity of ground not less than three acres at every station for depot pur-
164 poses, which said quantity may be laid off in such form as the said party of the first part shall choose and direct.

It is further covenanted, understood, and agreed between the parties that, whenever the parties of the first part shall become entitled to a conveyance of any part of said lands on completion of parts of the grade, &c., and of the laying of the superstructure as hereinbefore provided, the mode of selecting the particular tracts so to be conveyed from time to time shall be as follows: The said party of the first part shall select one-half of said tracts, and said party of the third part shall select the tracts for the other part, provided both parties shall be confined in their selections to lands contained in said deed of trust; and provided further, that neither party shall select said tracts so preëmpted as aforesaid, nor said tracts to which there was and is no title in said county of Jefferson.

165 It is further covenanted and agreed by the said party of the second part that it will, with all reasonable diligence, prosecute the claim of The County of Jefferson against The United States for the proceeds, whether in money or scrip, of the sales of all the lands selected as swamp lands, and which were sold by the United States after the passage of the swamp act on the 28th day of September, 1850; and, after deducting the expense of recovering the same, said party of the second part will pay over the balance thereof to the said party of the first part, or, in case said party of the first part prefer, they may prosecute said claim themselves free of charge and expense to the said party of

the second part, and take whatever may be recovered, and for that purpose may prosecute the same in the name of the said party of the second part.

166 It is further agreed that the certificate of the engineer in charge of the work on the railroad will be received as evidence that a section of work has been constructed according to the provisions of this agreement.

It is further agreed that said parties of the first part will not exceed the usual rates of passenger fare and freights on the railroad in the State of Illinois.

In testimony whereof the said parties have hereunto respectively subscribed their hands and seals the day and year first above written.

I. T. VAN DUZER.	[SEAL.]	S. T. STRATTAN.	[SEAL.]
N. A. SMITH.	[SEAL.]	JOHN R. ALLEN.	[SEAL.]
B. L. VOORHEES.	[SEAL.]	JOHN S. BOGAN.	[SEAL.]
JEFFERSON COUNTY,		E. P. GEAT.	[SEAL.]
By JOHN R. SATTERFIELD,		JAMES WESTCOTT.	[SEAL.]
S. W. CARPENTER,		THOMPSON ANGLER.	[SEAL.]
W. ADAMS,		JOHN WAITE.	[SEAL.]
County Judges.		EDWARD MCATEE.	[SEAL.]
JOEL PACE, *Trustee.*	[SEAL.]	A. P. ELKINS.	[SEAL.]
Z. CASEY.	[SEAL.]	SAMUEL GIBSON.	[SEAL.]
H. B. NEWBY.	[SEAL.]	JA'S B. TOLLE.	[SEAL.]
W. DUFF GREEN.	[SEAL.]	DAVID STEWART.	[SEAL.]
JNO. C. GRAY.	[SEAL.]	THO'S H. HOBBS.	[SEAL.]
167 H. T. PACE.	[SEAL.]	RICHARD S. NELSON.	[SEAL.]
A. M. GRANT.	[SEAL.]	JOHN S. BLAKE.	[SEAL.]
JOEL PACE.	[SEAL.]	L. S. BROOKINS.	[SEAL.]
	[SEAL.]	B. F. BREWER.	[SEAL.]
W'M B. ANDERSON.	[SEAL.]	D. C. WARREN.	[SEAL.]
	[SEAL.]		

168 December special term, A. D. 1868.

At this Norman T. Smith came into court and presented articles of agreement between Isaac T. Van Dusen, Norman A. Smith, Barnard L. Voorhees, of the first part, and Samuel J. R. Wilson and Thomas J. Scott, of the second part; and *for* consideration and for mature deliberation—

It is ordered and adjudged by the court that the same be approved and recorded, and which is in figures and words as follows, to wit:

Articles of agreement between Isaac T. Van Duzen & S. J. R. Wilson.

ISAAC T. VAN DUZEN & OTHERS
vs.
SAMUEL J. R. WILSON & THOMAS M. SCOTT. } Articles of agreement.

169 Articles of agreement made and entered into this nineteenth day of November, in the year one thousand eight hundred and fifty-eight, between Isaac T. Van Duzer, of Versailles, Illinois, and Norman A. Smith, of the city of Troy, and State of New York, Barnard L. Voorhees, of St. Louis, State of Missouri, doing business in the name, style, and firm of Vanduzer, Smith and Company, parties of the first part, and Samuel J. R. Wilson, county judge of, and Thomas M. Scott, associate justice of, the county court of Wayne County, State

of Illinois, on behalf of the said County of Wayne, party of the second part, witnesseth:

That, in consideration of the covenants made and entered into by the said party of the second part, it is agreed and covenanted by the said party of the first part to and with the party of the second part hereto, that they, the said party of the first part, will commence the con-
170 struction of a first-class single-track railroad at Fairfield, Wayne County, State of Illinois, within ninety days from the sealing and delivering of this agreement; and that they will, with all convenient despatch, prosecute, finish, and complete the same from Mt. Vernon, Jefferson County, to the eastern boundary of Wayne County, terminating on the "old survey" of the Alton, Mt. Carmel and New Albany Railroad, or within one mile thereof, in a substantial and workmanlike manner, and equip and operate the same between the two said points within the time of two years from the sealing and delivering thereof; and that they will furnish all necessary means, material, &c., to construct, finish, and complete a first-class railroad in all and every respect whatsoever, with a "T" rail of not less than forty-five
171 pounds to the lineal yard of said track; and that they will furnish or cause to be furnished, and keep and provide, at all times, as many locomotives, passenger, freight, and platform cars as may be demanded by, and required to, transact all business presented to be done on the same, at the several depots and station-houses along the line of said road, and to run at least one train of passenger and freight cars each way every day for the term of twenty years from the completion of said road; that they will erect as many depots, freight-houses, and station-houses—not less than three in Wayne County—as may be necessary for the convenience of public business, with sufficient side-track for such purpose, for and in consideration of the covenants and agreements on the part of the party of the first part to be performed.

It is covenanted and agreed to and with the said party of the
172 first part by the said party of the second part, that they will pay or cause to be paid to the said party of the first part the sum of five hundred thousand dollars, which it is agreed by the said parties hereto may be paid or liquidated by the conveyance of good and sufficient covenants of warrantees to lands belonging to and situate in the county of Wayne, at the rate of five dollars per acre for each and every acre so conveyed. It is further covenanted and agreed by the said party of the second part, in consideration of the covenants to be performed by the said party of the first part that, whenever and as often as the said party of the first part shall have built and completed the grade, including the masonry and bridging, on any three miles of the said railroad in Wayne County, then the said party of the second part agrees and hereby covenants that they, the said party of the second
173 part, shall, thereupon, immediately pay to the said party of the first part the sum of twelve thousand five hundred dollars, which said sum may be paid or liquidated in lands belonging to and laying in Wayne County, at five dollars per acre, which lands shall be conveyed to the said party of the first part by the said party of the second part by good and sufficient deed in fee-simple, with covenants of warranty; and so on from time to time as the party of the first part shall complete three miles of said grade in said Wayne County as aforesaid; said party of the second part shall pay to the party of the first part the sum of twelve thousand five hundred dollars, which may be liquidated by land, as aforesaid, until the whole of said grade, culverts, and bridging shall be completed in said Wayne County as aforesaid,

174 and after all of said grade is completed in Wayne County, so on in like manner until the whole grade is completed from the eastern boundary of Wayne County to Mt. Vernon, in Jefferson County.

It is further agreed and understood by both the contracting parties hereto that, upon the said party of the first part giving good and sufficient security, to be approved by the said second party, that then, and in that case, the said party of the second part shall pay to said party of the first part the remainder of the aforesaid sum of five hundred thousand dollars, which said sum, as remainder of said five hundred thousand dollars, the said party of the second part may also pay and liquidate in lands belonging to and laying in Wayne County, at five dollars per acre, as aforesaid.

It is further agreed and understood by and between said par-
175 ties that, in case said party of the first part do not give security and receive said monies in advance of the completion of *the* any part of the superstructure of said road, that the remainder of said monies *so* be paid shall be paid in the following manner, that is to say: Upon the laying down and completing of one mile of railroad in Wayne County, said party of the second part agrees to pay as aforesaid to said parties of the first part six thousand dollars for each and every mile of said road on which the superstructure and iron is laid, as said work progresses, until the completion thereof from the town of Fairfield, in Wayne County, to Mt. Vernon, in Jefferson County, and from the town of Fairfield to the eastern boundary of Wayne County; and, upon completing said superstructure, and the running the first train of cars over
176 said road, from Mt. Vernon, in Jefferson County, to the eastern boundary of Wayne County, then, and in that case, the party of the second part shall immediately pay to the party of the first part the remainder of said five hundred thousand dollars, which may be paid in county lands at five dollars per acre, as aforesaid; and, upon the completion of said superstructure and grade, and the running of the first train of cars over the said road as aforesaid, the said party of the second part covenants and agrees, after the using of all due diligence by S. J. R. Wilson, agent of the State of Illinois on the part of Wayne County, to collect from the United States the amount due said county of Wayne, either in land warrants or money for lands entered at the United States Land Office after the act of Congress approved on the
177 twenty-eighth day of September, A. D. 1850, that they will transfer and pay over the same to the said party of the first part, after deducting therefrom an amount sufficient to pay the expenses of selecting and surveying the lands i*mm*uring to said county under said act of Congress, and deducting all reasonable charges and expenses of taking proof as to the character of said lands, and the title of said county thereto, and collecting said monies.

It is further agreed and understood by and between said parties that, in case the said party of the second part shall, as the said monies or any portion thereof fall due, pay or liquidate the same in lands belonging to and laying in said Wayne County, then, and in that case, the mode of selecting said lands shall be as follows: The said party of the first part shall select one-half of said tracts, and the party of the second part shall select the other half.

178 It is further covenanted and agreed by the said party of the second part that they will procure and cause to be conveyed to the party of the first part a right of way in Wayne County one hundred feet wide, on such line of location as may be adopted by said party of the first part, so far as can be obtained by donation or purchase; and

in case the owner on any part of said line will not donate or voluntarily sell the same, and the same is taken by condemnation, the said party of the second part will pay all damages, expenses, and costs of condemnation, and save and keep said party of the first part free from expense or costs on account of the same.

And the said party of the second part further covenants and agrees to procure in like manner, by donations, purchase, or condemnation, and alike free from expense to the said party of the first part, a
179 quantity of ground of not more than three acres at every station for depot purposes, which said quantity may be laid off in such form as the said party of the first part shall choose and direct.

And it is further agreed and understood by the said parties hereto that any and all detentions in the prosecution of said road to completion through Wayne County, occasioned by delay in procuring the right of way and the assignment of the charter for said railroad on the part of the said party of the second part, or a nonful/fil'ment on their part of any portion of this contract, shall be held as an extension of time for the completion of said road.

It is further agreed and understood between the said parties that if the said party of the first part shall fail to complete their contract with the party of the second part, by refusing or neglecting to finish,
180 complete, or operate said railroad, then all work and superstructure made or caused to be made by them shall revert to the party of the second part, together with the franchises and right of way.

It is further understood and agreed by the contracting parties hereto that, in case the parties of the second part shall desire to have the time of commencing the work on said road extended for any time not exceeding one year, *that* then, and in that case, the party of the first part hereby covenants and agrees that the time of commencing said work shall be delayed for any time not exceeding one year, by the party of the second part giving to the party of the first part thirty days' notice before the expiration of ninety days from the date of this contract.

It is further agreed by the contracting parties hereto that the
181 parties of the first part are to accept and receive from the parties of the second part any lands in Wayne County which the party of the second part shall convey by good and sufficient deed, with covenants of warrant*ee*, as a compliance of the aforesaid contract to convey land.

It is further agreed by the said party of the first part that they will erect one sufficient depot on said railroad within six hundred yards of the court-house in Fairfield, the county seat of Wayne County, with sufficient depot buildings, station-houses, side-track, and one suitable and convenient depot east of the Little Wabash, and west of the Skillet Forks, in said county of Wayne. It is further agreed between said parties that the parties of the first part shall, twenty days before presenting their claims to the party of the second part for any portion of the monies which may be due the parties of the first part on the
182 aforesaid contract, notify the party of the second part of their intention, and of the amount which will be due. And it is further agreed and understood between the said contracting parties that, in the event of the said party of the first part completing and running the cars on the railroad from M't Vernon, in Jefferson County, to Fairfield, in Wayne County, by the twenty-fifth of December, A. D. 1859, then and in that event the said party of the second part will, in addition to the said amount above contracted to be paid, convey to the said party of the first part, all the lands that may belong to the said county of

Wayne, after deducting the amount of one hundred thousand acres, which said lands are to be conveyed after the completion of said railroad from the eastern boundary of Wayne County to M't Vernon, in Jefferson County.

183 It is further agreed by said contracting parties that, in the event of said railroad running over any of the lands belonging to either of said parties, they shall grant a free right of way over the same without charge or cost.

ISAAC T. VANDOOZER, [SEAL.]
Witness, By B. L. VOORHEES, *Att'y.*
GEO. G. ROCKWOOD. N. A. SMITH, [SEAL.]
Witness, By B. L. VOORHEES, *Att'y.*
R. L. BOGGS B. L. VOORHEES, [SEAL.]
Parties of the first part.
S. J. R. WILSON, [SEAL.]
THOMAS M. SCOTT, [SEAL.]
County Court.

Continuation of the foregoing agreement.

It is further agreed by the parties of the first part that, if the parties of the second part raise by mortgage of the county lands one hundred and fifty thousand dollars, to be paid to the parties of the first part in the same proportion as the land, i. e., as fast as the work progresses
184 at the rate of $5 per acre, then the parties of the first part will not ask any further payment from the county until they run a train of cars from M't Vernon to Fairfield; then the parties of the second part shall deed, or cause to be deeded, to the parties of the first part, the proportion of the land called for in the contract.

It is further agreed by the parties of the first part, that if money is raised by mortgage on the county lands by the parties of the second part, that they of the first part shall receive the lands with the encumbrance thereon, and to be cleared by them without additional expense to the county.

Provided, that all monies raised on said lands is for the use, and is paid to the parties of the first part.

Fairfield, Dec. 27th, 1858.

I. F. VANDEUZER,
By B. L. VOORHEES, *Att'y.*
N. A. SMITH,
By B. L. VOORHEES, *Att'y.*

185 Contract continued.

It is further agreed by the said party of the first part that they will, sixty days before applying for any payments, in the event that lands have to be sold by said county court to make payments on this contract, select one-half of the lands so to be sold, and give the county court notice thereof, and shall bid for each tract of such land ($5) five dollars per acre, and said second parties agree that if any of said lands shall sell for more than five dollars per acre, the said first parties shall be entitled to the excess over that sum.

I. T. VANDUZER,
By B. L. VOORHEES, *Att'y.*
N. A. SMITH.
B. L. VOORHEES.

186 *Order of Wayne Co. modifying supplemental contracts.*

December special term, A. D. 1858.

The following order was passed:

Ordered, That so much of the supplemental contract made with Vanduson, Smith & Co., as contemplates the mortgaging one hundred thousand acres of the county lands as collateral security for the payment of $200,000, be, and the same is hereby, rescinded and revoked; and be it further ordered that Samuel J. R. Wilson, one of the members of this court, be, and he is hereby, authorized and required to proceed forthwith to the city of New York for the purpose of carrying into effect the foregoing order:

187 *Assignment of contract of Jefferson & Wayne Co's.*

This agreement, made this 12th day of September, A. D. 1839, by & between J. T. Vanduzen, of Versa'les, Ills.; B. L. Voorhies, of St. Louis, Mo.; & N. A. Smith, of Troy, N. Y., known under the name & style of Vanduzen, Smith & Co., parties of the first part, & the Mount Vernon Railroad Company, a corporation in the State of Illinois, parties of the second part, witnesseth:

The parties of the first part, for considerations hereinafter mentioned, & for one dollar lawful money of the United States, to them in hand paid by the parties of the second part, the receipt thereof, which is hereby acknowledged, doth bargain, grant, sell, convey, & assign to the parties of the second part all their right, title, & interest in two contracts made and entered into by and between the counties of Jefferson & Wayne, in the State of Illinois, & their legal representatives & J. T. Vanduzer, B. L. Voorhies, & N. A. Smith, of towns & States as aforesaid, under the name and style of Vanduzer, Smith & Co.; also, all claims to any & all lands, monies, materials, & personal property which may hereafter become due to them under said contract; also, all personal property now belonging to the said firm—horses, cattle,
188 mules, wagons, carts, harness, working tools of every description now in use in the construction of said railroad; also, all work finished and unfinished, ties, timber, &c., now in use & ready for use on the said road.

They also further agree to pay all debts & demands now due against said firm for the prosecution of said works, except the monies due N. A. Smith, (which debt is for the aforesaid corporation to pay,) & to convey, or cause to be conveyed, $200,000 of the capital stock of the said corporation to Ira Hinsey, of the city & State of N. Y., in accordance with a contract & resolution of said company & its board.

The parties of the second part, in & for the considerations above mentioned, do agree to give the parties of the first part all the capital stock of the said corporation, $1,000,000, & 200 of their construction bonds of $1,000 each, & to procure their release from the counties of Jefferson & Wayne from further fulfilling of said contract.

In witness whereof the parties of the first part have affixed their hand & seal, & the parties of the second part, through their pres. & treasurer, have affixed their official seal & signatures the day
189 and year before mentioned.

B. L. VOORHEES, [ ]
Att'y for J. T. Vanduzen.

In presence of—
GEO. G. ROCKWOOD.

B. L. VOORHEES. [ ]
N. A. SMITH. [ ]

In presence of—
GEO. G. ROCKWOOD.

Z. CASEY, *Pres.*
N. A. SMITH, *Treas.*

190 *Certified copy of mortgage.—Exhibit A to bill.*

County court to Isaac Seymour.

This indenture, made this twentyieth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, between Samuel J. R. Wilson, judge, and J. Thomas M. Scott, associate judges of the county court of the county of Wayne, in the State of Illinois, parties of the first part, and Isaac Seymour, of the city and State of New York, banker, trustee, as hereafter mentioned, party of the second part, witnesseth:

Whereas the Congress of the United States duly passed an act, approved September the twenty-eight, one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for all the swamp and overflowed lands within its limits, to be *situated* under the direction of the commissioners of the land office:

And whereas the legislature of the said State of Illinois passed an act, approved by the governor of said State on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled
191 "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," which said act authorized the appropriation and disposal of said lands for such purposes as may be deemed expedient by the court or county judges:

And whereas the legislature of the said State of Illinois passed an act, approved by the gove'nor of said State on the fifteenth day of February, one thousand eight hundred and fifty-five, entitled "An act to incorporate The Mount Vernon Railroad Company," whereby all such persons and corporations as shall become stockholders under the provisions of the said act, and their successors were duly incorporated into a body politic and corporate under the name of The Mount Vernon Railroad Company, and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within the said county of Wayne, in aid of the construction and maint*ai*nance of the said railroad, as they deem best for the public interest of said county:

And whereas, at a special term of the said county court of the county of Wayne, held on the 28th day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the
192 same court, whereby a special election was ordered and directed on the fifth day of November, one thousand eight hundred and fifty-five, to be held for the purpose of taking the sense of the qualified voters of the county upon the mortgaging that portion of the said overflowed and swamp lands hereinafter described, for the purpose of aiding in the construction and maint*ai*nance of the said The Mount Vernon Railroad; and the said county county court did then and there order public notice of such special election to be given by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did prepare a proposition containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said propositions to be duly printed at large as an election ticket, and presented to the said qualified voters of said county, to be used at such

election in the words and figures following, to wit: "For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county;" "Against the same." And
193 the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said charter and the laws of the said State of Illinois, and the returns thereof made, canvassed, and published in all respects as other county elections are required to be in and by the said laws:

And whereas the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "Yea" upon the said several printed propositions or tickets cast by them at the said election; and whereas, upon the returns of said special election being duly made, canvassed, and published as aforesaid, the county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order and adjudge and determine to execute a mortgage in conformity to such proposition or plan, and to the provision of this instrument, to the parties of the second part *at* trustees upon the land hereinafter described, for the purpose of aid-
194 ing in the construction and maint*ai*nance of the said Mount Vernon Railroad, which said order was duly made in open court on the twentieth day of April, one thousand eight hundred and fifty-nine:

And whereas by virtue of the said several acts and proceedings the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maint*ai*nance of the railroad of the said Mount Vernon Railroad Company, and the said parties deem it best for the public interest of the said county of Wayne that the lands hereinafter described should be mortgaged to the party of the second part, trustee and commissioner, duly appointed and selected by both the said parties of the first part and the said The Mount Vernon Railroad Company, upon the terms and conditions particularly set forth:

And whereas the said The Mount Vernon Railroad Company has deemed it advisable to provide for the issue and disposal, now and hereafter, of its construction bonds for the purpose of rais'ng funds from time to time, for the construction and completion of the railroad, and for the equipment thereof, and the expenses of organizing
195 and operating the same, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of such construction bonds and obligations in the just and full sum in the ag'regate of eight hundred thousand dollars, secured to be paid by their four hundred construction bonds or obligations of and for five hundred each, and by their six hundred construction bonds or obligations of and for one thousand dollars each, to the extent of eight hundred thousand dollars in the ag'regate, to bear date on the first day of , one thousand eight hundred and fifty-nine, and be payable in fifteen years from the date thereof, which will be in the year one thousand eight hundred and seventy-four, at the Bank of North America, in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annual'y at the Bank of North America, in said city of New York, on the first day of May and November, in each year, to be secured hereby; all which bonds are to have warrants for the payments of the interest thereon attached, and to be in the form following, the respective number and amounts thereof being omitted:

"The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer one thousand dollars, which said company hereby promises to pay on presentation of this bond hereof at the Bank of North America, in the city of New York, on the first day of May, one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid *in* presentation of the proper interest warrants hereto annexed, at the said Bank of North America.

"This bond is one of a series of four hundred, of five hundred dollars each, and 600 of 1,000 each, of like term and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and the completion of the said railroad, and the expenses incident thereto. Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county, for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

"In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in this behalf, by its president and treasurer, and its interest warrants to be signed by its secretary, and its corporate seal to be hereto affixed at the , in the State of , this day of , one thousand eight hundred and fifty-nine."

Which said construction bonds or obligations are primarily secured by this indenture, and the lands herein described, and the avails thereof, are to constitute a primary fund for the payment of the principal and interest of the said bonds.

Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of one dollar to them severally paid by the parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and, by these presents, do grant, bargain, sell, remise, release in full of, convey, and confirm to the party of the second part, his successors, and the survivors of them, and the heirs and assigns of such survivors, forever, all and singular the land and premises situate and lying and being in the county of Wayne, and the State of Illinois, bounded and described as follows, that is to say:

Northeast quarter, southwest quarter, southeast of northwest quarter, all in section three; west half of northeast quarter, southeast of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter, and south half of southwest quarter, all of section four; southeast quarter, north half of east quarter, west half of southwest, southeast of southwest of section five; north half of northwest quarter, north half of northeast quarter, southwest of northeast quarter, northeast of southeast of section eight; west half of northeast quarter, northwest quarter, northeast of southwest, east half of northeast quarter, northwest of southwest quarter, southeast quarter of section nine; southwest of southeast, west half of southeast of section

ten; west half of northeast quarter, west half and southeast quarter of section fifteen; northeast of southwest quarter, north half, east half of southeast, northwest of southeast quarter of section twenty-two; southwest of northwest quarter, southwest of southwest quarter of section twenty-three; east half of southeast, west half of southwest, northwest of the southeast quarter of section twenty-five; south half of northwest quarter, west of northwest quarter, east half of southwest quarter, and southeast quarter of section twenty-six; west half of southwest quarter, southeast of southwest quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter, southeast quarter, northeast of southwest quarter, and west half of northwest quarter of section thirty-five; northwest of northwest quarter, west half of southwest, northeast of northeast quarter of section thirty-six, all of township one south, range five east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half of northwest quarter of section two; east half of northwest quarter, northwest of southeast quarter, sout'east of northwest of section five; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter of section seven; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, and south half of section eight; southeast of northeast quarter, southeast quarter of section ten; all of section eleven; southeast of northwest quarter, northeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter, southwest quarter, east half of southwest quarter, west half of the southeast quarter of section twelve; north half of northeast quarter, southwest of northeast quarter, west half, and southeast quarter of section thirteen; all of section fourteen; east half of southwest quarter, south half of northwest quarter of section fifteen; all of section seventeen; northwest of northeast quarter of section eighteen; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section nineteen; all of section twenty; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section twenty-one; north half, northeast of southwest quarter, west half of southwest quarter, east half of southeast quarter of section twenty-two; all of section twenty-three; all of section twenty-four; all of section twenty-five; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twenty-six; northeast quarter, southwest of southeast quarter, west half of northwest quarter of section twenty-seven; all of section twenty-eight; all of section twenty-nine; southwest southwest quarter, east half of northeast quarter, east half southeast quarter of section thirty; northeast quarter, south half southwest quarter of section thirty-one; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of southwest quarter, west half of northwest quarter, east half northwest quarter, east half of southwest quarter, northwest of southwest quarter, southwest of southwest quarter of section thirty-three; all of section thirty-four; all of section thirty-five; all of section thirty-six, of township two south, of range six east. All of section one; all of section two; east half no'thwest quarter, east half southwest quarter, northwest of southwest quarter of section three; south-

east quarter, northeast of southeast quarter, west half of southeast quarter, east half of northwest quarter of section four; east half of southeast quarter, west half of southeast quarter of section six; north half
202 southeast quarter, north half of southwest quarter, southeast of of southwest quarter of section seven; northeast quarter, southeast of northwest quarter, east half of southeast quarter, northwest of southeast quarter of section ten; southeast quarter, west half, northwest of southeast quarter of section eleven; north half, north half of southwest quarter, southeast of southwest quarter, north half of southeast quarter, southwest of southeast quarter of section twelve; northeast of northwest quarter, west half of northwest quarter of section fourteen; southeast quarter, east half of northwest quarter, northwest of southeast quarter, east half of southwest quarter of section eighteen, of township three, of six east. West half of northeast quarter, west half of southeast quarter, southeast of southeast quarter of section two; *all of section two*; all of section three; all of section four; all of section five; all of section six; all of section seven; all of section eight; all of section nine; all of section ten; all of section eleven; southwest of northwest quarter, south half, of section twelve; all of section thirteen; all of section fourteen; all of section fifteen; all of section seven-
203 teen; east half, east half of northwest quarter of section eighteen, of township three south, of range seven east. Southwest of southwest quarter of section one; west half of northeast quarter, northwest quarter, south half of section two; north half, northeast of southeast quarter of section three; northeast of the southwest quarter, north half of section four; north half, west half of southwest quarter, northwest of southeast quarter of section five; northeast of the northwest quarter, north half of northeast quarter of section seven; northeast of northwest quarter, west half of northwest quarter of section eight; east half of section eleven; all of section twelve; northeast quarter, south half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southwest quarter, southwest of southeast quarter of section thirteen; northwest of northwest quarter of section twenty-three; northwest quarter, northeast of southwest quarter of section twenty-four, of township one south, range eight east. East half of northwest quarter, southwest of northwest quarter, west half of
204 southwest quarter of section six; southeast of northwest quarter, northeast of southwest quarter, west half of southwest quarter; west half of southeast quarter of section seven; sout'east of southwest quarter, southwest of southwest quarter of section eight; northeast of northwest quarter, west half of northwest quarter, west half of southwest quarter of section seventeen, of township three south, range eight east. Southwest quarter, west half of southeast quarter, southeast of southeast quarter of section one; south half of section two; southeast quarter, southeast of southwest quarter of section three; west half of southeast quarter of section six; the southeast of northeast quarter, west half of northeast quarter, west half southeast, one-half southeast quarter of section seven; west half of northwest quarter of section eight; east half, east half of southwest quarter, northeast of northwest quarter of section ten; all of section eleven; north half, west half of southwest quarter, northwest of southeast quarter of section twelve; southwest of southwest quarter, east half of southwest quarter, southwest of southeast quarter of sec-
205 tion thirteen; all of section fourteen; east half of southeast quarter, southwest of southeast quarter of section fifteen; west half of northwest quarter, south half of section seventeen; all of section eighteen; north half, southeast quarter of section nineteen; all of sec-

tion twenty; west half of northeast quarter, southeast of northeast quarter, west half, south east quarter of section twenty-one; east half, south half of northwest quarter, *northwest quarter* of section twenty-two; northeast quarter, west half, east half of southeast quarter, southwest of southeast quarter of section twenty-three; west half of northeast quarter, west half, west half of southeast quarter of section twenty-four; northwest of southeast quarter, northwest quarter, north half of southwest quarter, west half of northeast quarter of section twenty-five; all of section twenty-six; all of section twenty-seven; all of section twenty-eight; west half of northeast quarter, southeast of northeast quarter, west half, southeast quarter of section twenty-nine; north half of northeast quarter of section thirty; all of section thirty-two; north half, west half of southwest quarter, northwest of southeast quarter of section thirty-three; northeast quarter, northeast of northwest
206 quarter, west half of northwest quarter, east half of southeast quarter of section thirty-four; west half of northwest quarter, northwest of southwest quarter, east half of southwest quarter, southeast quarter of section thirty-five; south half, *of* southwest of northeast quarter, southeast of northeast quarter of section thirty-six, township one south, range nine east. West half of northeast quarter, northeast northeast quarter, northwest quarter of section one; all of section two; northwest quarter, east half of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section three; east half of northeast quarter, southwest of northeast quarter, west half southeast quarter, northeast of southeast quarter of section four; east half of section five; southwest of southwest quarter of section eight; west half of northwest quarter of section nine; east half of northeast quarter, southwest of northeast quarter, northwest quarter, east half of southwest quarter, southeast quarter of section ten; northeast quarter, west half of section eleven; west half of northwest quarter, northeast of northwest quarter,
207 west half of southwest quarter, southeast of northwest quarter section twelve; northeast of northwest quarter, northwest of northwest quarter of section thirteen; northeast of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section fourteen; northeast quarter, west half of section fifteen; west half of northeast quarter, northeast of northwest quarter, southeast of southeast quarter of section seventeen; east half of northeast quarter, east half of southeast quarter of section twenty; northeast quarter, west half of section twenty-one; northeast of northwest quarter, west half of northwest quarter of section twenty-two; southeast of southwest quarter of section twenty-six; west half southwest quarter, southeast of southwest quarter of section twenty-seven; south half of northeast quarter, west half southeast quarter of section twenty-eight; east half of southwest quarter, east half, southwest of southwest quarter of section twenty-nine; southeast of southwest quarter, west half of southwest quarter, southwest of northwest quarter, south half of southeast quarter of section thirty; west half of northwest quarter, south-
208 east of northeast quarter of section thirty-one; east half, southwest of northwest quarter, north half of southwest quarter, southeast of southwest quarter of section thirty-two; all of section thirty-three; all of section thirty-four; west half of southwest quarter, southeast of southwest quarter, northeast of the northwest quarter, west half of northwest quarter of section thirty-five; southwest of northeast quarter, east half of southeast quarter of section thirty-six, township two south, range nine east. East half northeast quarter, southwest

of northeast quarter, south half of southwest quarter, southeast quarter of section one; west half of northeast quarter, southeast quarter, west half of section two; west half northeast quarter, south half of southeast quarter of section three; east half, east half northwest quarter, southeast of southwest quarter of section four; northeast of northeast quarter of section five; east half of southwest quarter, southwest of southeast quarter of section seven; northeast of southwest quarter, southwest of southwest quarter of section eight; east half of southwest quarter, east half, east half of northwest quarter of section nine; all of section ten; northwest quar-
209 ter, east half, west half of southwest quarter of section eleven; all of section twelve; all of section thirteen; south half of northeast quarter, west half of northwest quarter, southeast of northwest quarter, south half of section fourteen; all of section fifteen; northwest of northwest quarter of section seventeen; north half of northeast quarter of section eighteen, of township three south, range nine east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half northwest quarter of two; east half of southwest quarter, northwest of southeast quarter, southeast of northwest quarter of section five; northeast of southeast quarter of section six; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, southeast quarter of section seven; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, southwest quarter, southeast quarter of section eight; southeast of northeast quarter, southeast quarter of section ten; all of section eleven;
210 northeast of northwest quarter, southeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter *of* southwest quarter, east half of southeast quarter, west half of southeast quarter of section twelve; north half of northeast quarter, southwest of northeast quarter, southeast, west half of section thirteen; all of section fourteen; east half southwest quarter, south half of northwest quarter of section fifteen; all of section seventeen; northwest of northeast quarter of section eighteen; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section nineteen; all of section twenty; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of twenty-one; north half, northeast of southwest quarter, west half of southwest quarter of section twenty-two; all of section twenty-three; all of section twenty-four; all of section twenty-five; east half of northeast quarter, northwest of northeast quarter, east half of south-
211 east quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twenty-six; northeast quarter, east half of southeast quarter, southwest of southeast quarter, west half of northwest quarter, southeast of section twenty-seven; all of section twenty-eight; all of section twenty-nine; southwest *of southwest* of southwest quarter, east half of northeast quarter, east half of southeast quarter of section thirty; northeast quarter, south half northwest quarter of section thirty-one; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of northwest quarter, west half of northwest quarter of section thirty-two; east half, east half of southwest quarter, northwest quarter, northwest of southwest quarter, southwest of southwest quarter of section thirty-three; all of section thirty-four; all of section thirty-five; all of section thirty-six, of township two south, of range six east.

West half of northeast quarter, west half, west half of southeast quarter, southeast of southeast quarter of section two; all of section one; all of section three; east half of southeast quarter, southwest of south-
212 east quarter, east half of southwest quarter, east half of northeast quarter of section four; east half of northeast quarter, northeast of northwest quarter, east half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southeast quarter of section seven; all of section ten; all of section eleven; all of section twelve; all of section thirteen; all of section fourteen; east half of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section fifteen; south half of northeast quarter of section twenty-two; east half, east half of northwest quarter, northwest of northwest quarter, northeast of southeast quarter, southeast of southwest quarter of section twenty-three; all of section twenty-four; all of section twenty-five; southeast quarter, southeast of northwest quarter, southwest of southwest quarter, southeast of southwest quarter, northeast of southwest quarter of section twenty-six; northeast of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section thirty-four; all of section thirty-five; all of section thirty-six, township one north,
213 of range nine east. South half, east half of northwest quarter, northwest of northwest quarter, east half of southwest quarter of section nineteen; west half northwest quarter, south half of section twenty; east half of northeast quarter, east half of southeast quarter, southwest of southeast quarter of section twenty-three; northeast quarter, west half of section twenty-four; west half, west half of southeast quarter, southeast of southeast quarter, northeast of southeast quarter of section twenty-five; east half of northeast quarter, east half of northwest quarter, northeast quarter of section twenty-six; southeast of northeast quarter, southeast quarter, west half section twenty-eight; west half of northeast quarter, northwest, northeast of southeast quarter, south half of southeast quarter northwest of southwest quarter of section twenty-nine; east half of northeast quarter, northwest of northeast quarter, northeast of southeast quarter, east half of northwest quarter, north half of southwest quarter, southwest of southeast quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter of section thirty-two; northwest quarter, east half northeast of south-
214 west quarter of section thirty-three; north half, northeast of southeast quarter, west half of southeast quarter, southwest quarter of section thirty-four; west half of southwest quarter, southeast of southwest quarter of section thirty-five; all of section thirty-six, of township two north, of range nine east. Southwest of northwest quarter of section one; southeast of southeast quarter of section two southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section eleven; southeast of northwest quarter, west half of northeast quarter of section fourteen; southeast of southeast quarter, west half of southwest quarter, southeast of southwest quarter of section twenty-six; northwest of northwest quarter, northwest of northeast quarter of section thirty-five, township one north, range five east. Southwest of northwest quarter, south half of southwest quarter of section thirty-six, township two north, range five east. East *east* half of lot one northeast quarter of section six; southeast of southeast quarter of section thirteen; southeast of northwest quarter, south half, northeast quarter of section twenty-four; west half
215 of northeast quarter of section twenty-five; east half of northwest quarter of section thirty-five, township one north, range six

east. Southeast of southeast quarter of section nineteen, township two north, range six east. East half southeast quarter, southwest of southeast quarter of section one; northwest of northeast quarter, east half of northeast quarter of section twelve; northwest quarter of section nineteen; southeast of northwest quarter, southwest of northeast quarter, west half of southeast quarter of section twenty-one; southwest of southwest quarter of section twenty-seven; east half & southwest of northeast quarter of section twenty-eight; southwest of northeast quarter of section thirty-five; southeast of northeast quarter of section thirty-six, township one north, range seven east. Southeast of southwest quarter of section twenty-one; north half of southeast quarter, west half of southeast quarter of section twenty-two; southeast of southeast quarter, southeast of southwest quarter, northwest of southwest quarter of section twenty-three; southwest of northwest quarter, west half
216 of southwest quarter, southeast of southwest quarter of section twenty-four; southwest of northwest quarter, southwest of southeast quarter, northwest of southwest quarter of section twenty-five; northeast of northeast quarter, northeast of southeast quarter of section twenty-six; west half of northeast quarter, southeast of northeast quarter, northeast of southeast quarter of section thirty-six, township two north, range seven east. Southeast of southeast quarter of section five; lot one northwest (containing sixty-six acres) section six; northeast of southwest quarter section six; lost two northwest quarter, (containing fifty-two acres,) southwest of northeast quarter section seven; southeast of southwest quarter, southwest of southwest quarter of section eight; southwest quarter of section twenty-two; southeast of southeast quarter, southwest of southwest quarter of section twenty-six; northwest of northwest quarter of section twenty-seven; northeast of northwest quarter, east half of northeast quarter, section twenty-eight; all of section thirty-four; west half of northwest quarter, southeast of northwest quarter, southwest of northeast quarter, east half of
217 northeast quarter, west half of southeast quarter section thirty-five; southwest quarter section thirty-five; northwest of northwest quarter of section thirty-six, township one north, range eight east, Northwest of northeast quarter, northwest quarter, east half of southeast quarter of section thirty-one, of township two north, range eight east. Southwest of northwest quarter, east half southwest quarter, northwest of southwest quarter of section six; southwest of northwest quarter, northeast quarter, northwest quarter of southeast quarter, southwest of southeast quarter, east half of southeast quarter of section ten; north half, west half of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section eleven; east half, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twelve; northwest of northeast quarter, north half of northwest quarter of section thirteen; northeast quarter, east half of northwest quarter, northwest of northwest quarter of section fourteen; northwest of northeast quarter, northwest quarter, north-
218 east of southwest quarter, southwest of southeast quarter, west half of southwest quarter, southeast of southwest quarter, southwest of northwest quarter, south half of section ; east half of southeast quarter of section twenty-nine, township two south, range five east. The whole containing one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred*ths* acres pre-empted, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging o*n* in any wise appertaining, and the reverson and reversions,

remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law or in equity, of the said parties of the first part of, in, and to the same, and each and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the lands and premises hereby granted or intended so to be, and each and every part and parcel thereof, with the appurtenances, unto the said party hereto of the second part, his successors and assigns, forever, as joint tenants, and not as
219 tenants in common, for the uses and purposes in this indenture set forth and declared, and subject to the provisions and requirements of the before-mentioned act of Congress of the United States and the act passed by the legislature of the State of Illinois, incorporating the said The Mount Vernon Railroad Company; and subject also, to the possession, control, and management of the party of the second part so long as said construction bonds or obligations shall remain unforfeited by the proper performance of all the stipulations thereof: provided, always, and these presents are upon the express condition that, if the said The Mount Vernon Railroad Company shall well and truly pay, or cause to be paid, to the holders of the said construction bonds or obligations, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon at the times and in the manner as hereinbefore provided, according to the true intent and meaning of these presents, that
220 then and from thenceforth this indenture and the estate hereby granted shall cease, nunc, and be utterly void.

And this indenture further witnesseth that these presents are made, executed, and delivered, upon the terms, conditions, and agreements following, that is to say:

First. That the one hundred thousand eighteen acres of land granted as aforesaid, shall within months after the date of these presents, be carefully valued and appraised by the said parties of the first part, their officers and agents, and the relative value of each peace or parcel land established for the purpose of division and *attenement* thereof into four classes, of the following number of acres and valuations, that is to say: 1st. First class, consisting of lands of special value, as coal fields, quarries of slate, mineral, &c., from peculiarity of location, as being near town or village, acres, minimum valuation, per acre. 2d. Second class of lands, of superior agricultural qualities and location, acres, minimum valuation, per acre. 3rd. Third class of lands, of high agricultural qualities, almost universal in the State of
221 Illinois, acres, minimum valuation, per acre. 4th. Fourth class, of the lowest agricultural qualities, within fifteen miles of the road or branches, but all capable of cultivation, acres, minimum per acre; formi'g an a'gregate valnation per acres of ; all of which the said parties of the first part, with as little delay as practicable, shall certify and declare to the said party of the second part, by proper lists and sc'edule, under seal, with such description as shall enable the party of the second part to ascertain and establish the precise location, position, and boundaries of each and every piece or parcel of said land, and the class to which the same belongs, and the price or sum for which the same be sold or conveyed; which price or sum may be varied or changed from time to time at the pleasure of said parties of the first part: provided, that the selling price of any piece or parcel of land shall, in no case, be less than the minimum valuation of the same hereinbefore given, and by the class to which it

is allotted, until the aggregate sum actually realised and received
222 in money and by the surrender of construction bonds or obligations, as hereinafter provided, shall amount to the aggregate valuation of any of the classes above set forth and declared, when the said parties of the first part may instruct and empower the said party of the second part to sell and convey any re'ining pieces or parcels of land of said class, at such price as they may deem proper, even below the minimum valuation of the class; but not to alter or change the mode of selling in the appropriation of the proceeds and receipts from such sale.

Second. That the said party of the second part having received from the said parties of the first part such said list, sc'edule, allotment, valuations, and selling prices, shall and will grant, bargain, sell, and convey to all persons, bodies politic or corporate, applying for the purchase of the land and premises above mentioned, making extended*ing* payment therefor at prices not less than the selling rates established by the said parties of the first part, and shall require in payment
223 the surrender of construction bonds or bond nearest in amount to the actual purchase-money and consideration of the conveyance, and the payment of the residue of said purchase-money in cash; but in no case shall any piece or parcel of land be sold or conveyed by the said party of the second part without the surrender and consequent discharge of said construction bonds or bond. And whenever any purchaser may tender construction bonds or bond exceeding in amount the purchase-money of the land for which application is made, the party of the second part may receive the same and pay the excess (provided the same does not exceed two hundred and fifty dollars in any one case,) in money to the purchaser, the intent thereof being thereby to anticipate the payment of said construction bonds or bond by the sale and conveyance of said land in manner aforesaid.

3rd. Third. The said party of the second part shall and will cancel and discharge every construction bond or obligation, and the interest warrents therein, which he may receive in payment for land and as part or the whole consideration of each deed or sale by defacing the
224 seal of the corporation, in receipt thereof, and will make or *or* cause to be made in or upon the face thereof, a note or memorandum with proper description of the land sold and conveyed, with the date of the conveyance for which the same has been received, and cancelled in such manner and form as will enable the parties of the first part to trace and follow the appropriations of all the said construction bonds.

Fourth. That the said party of the second part shall and will set forth and declare in each and every deed of conveyance the true amount of the purchase-money of the land and premises conveyed or intended to be conveyed thereby, and the part thereof for which a bond or bonds may have been received, with the number and amount thereof; and also, the sum actually paid in cash for the residue and remainder of said purchase-money; and also, whenever a bond or bonds exceeding the amount of the purchase-money may have been received in payment thereof, the amount in cash actually refunded to the purchaser or holder of such bond or bonds for such excess.

225 Fifth. That the interest warrents of said construction bonds or obligations becoming due and payable during the progress of the work of constructing, and up to inclusive of, & the warrents for the semi-annual*ly* interest becoming due and payable next after the completion and actual use of the main railroad and branches shall be paid

from and out of the proceeds and avails of the said construction bonds or obligations as part of the cost of said road and branches, but that all interest warrants becoming due and payable thereafter when the said railroad and branches shall be put in operation shall be paid from and out of the receipts and income from the use and operation of the road and branches, unles' the same be inadequate thereto, in which case any unpaid ballance of the same shall be paid from the proceeds and avails of the said bonds.

Sixth. That the said party of the second part shall and will cede, set aside, and preserve *all* interest fund, as further and collateral
226 security for the punctual payment of all the interest warrants of the said construction bonds or obligations at the time when the same severally becomes due and payable, by the appropriation of the proceeds of sales of twenty thousand acres of the lands above described, set aside for this purpose and held by the said trustee free from incumbrance.

Seventh. That the said party of the second part shall and will manage and invest the interest fund in such manner as will render the same at all times readily convertible into cash, to prevent any delay in the payment of the interest should the provisions heretofore made and declared be at any time inadiquate for that purpose, and for the payment of any deficiency will use and appropriate the said interest fund in following manner: First, the current interest of the interest fund; second, the proceeds of the sales of the above-described lands.

And this indenture further witnesseth that the said parties of the first part, for themselves and their successors, do covenant and agree that if default shall be made in the payment of the interest upon
227 the said construction bonds or obligations, so that a sum equal to one years' interest of the whole amount of the said construction bonds or obligations already issued and secured by these presents, or that if default shall be made in the payment of the principal of said construction bonds or obligations that then and from thenceforth it shall and may be lawful for the said parties of the second part to enter into and upon and take possession of all and singular the lands and all the premises included or intended to be included in this mortgage.

And further, that the said party of the second part having entered into full possession of all and singular the lands hereinbefore particularly set forth and described, remaining unsold at the time of such entry, if any there be, may proceed to sell and dispose of the same, or so much thereof as shall be necessary for the purpose of paying said principal and interest; and may make such sales of the said premises, each and every of them, and all benefit and equity of redemption of the said parties of the first part therein, at public auction, giving reasonable and
228 public notice of the time and place of said sale in the public newspapers of the State of Illinois, published at Chicago and Springfield, and in two public newspapers of the city of New York; and, as the attorney of the said parties of the first part for that purpose by these presents duly authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in fee-simple, and out of the mon*ies* arising from such sale and sales to retain the princip*le* and interest, which shall then be due on said construction bonds or obligations, for the benefit of the holders thereof, together with the cost and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the Mount Vernon Railroad Company, its successors and assigns, forever; which sale shall forever be a per-

petual bar, both at law and in equity, against the said parties of the first part, their successors and assigns, and all other persons claiming or to claim the premises so sold or any part thereof by, from, or under them.

229 And it is further provided that if, after the said construction bonds or obligations shall be fully paid, together with all arrears of interest thereon, there shall be any of the above-described lands remaining unsold, or any of the proceeds and avails of the said bonds in the hands of the party of the second part unprovided for, then and in that case said party of the second part shall convey absolutely the said lands, and shall pay, transfer, and deliver said proceeds and avails to the said The Mount Vernon Railroad Company, its successors and assigns, forever.

And it is here mutually agreed, by and between the parties to these presents, that the said party of the second part, his heirs, executors, or administrators shall not be answerable for the acts omissions or defaults of his attorneys hereinafter referred to, and that he shall be responsible for gross negligence and wilful default only.

And it is further agreed that the said parties of the first part, their successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the premises hereinbefore granted by, from, under, or in trust for

230 them, shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, and cause to be made and executed all and every such farther and other reasonable acts, conveyances, and assurances in the law for better and more effectually vesting and confirming the premises hereby granted, or intended so to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs and assigns, or his or their counsel, learned in the law, shall be reasonably advised, or required.

And it is further provided that the parties of the first part shall, upon the request of the party of the second part, designate and appoint a commissioner, resident of the said county of Wayne, to make and execute conveyances of said land to purchasers thereof, as herein provided, and generally to carry into effect the provisions hereof; and that the said party of the second part may execute and deliver the power of attorney to such commissioner, authorising and empowering *them* duly to

231 make, execute, and deliver in his behalf, as such trustee, deeds and conveyances to the purchasers of such lands as may be proper, and to do such other acts and things as may be necessa'y to carry into effect the provisions of this instrument, and the execution of such conveyance by the said commissioner, when so empowered by the said party of the second part, shall be effectual to confirm and establish in such purchasers, respectively, all of the right, title, interest, and estate of the said party of the second part, as fully to all intents and purposes as if the said party of the second part had personlly made and executed the same.

In witness whereof the said parties of the first part have herewith set their hands and seals, and the seal of the said county court, the day and year first above-written.

[SEAL.] S. J. R. WILSON, *Co. Judge.* [SEAL.]
THOMAS M. SCOTT. [SEAL.]

Signed, sealed, and delivered in presence of—
B. L. VORHEES.

232 STATE OF ILLINOIS, *Wayne County:*

I, J. W. Barmhill, clerk of the county court of said county of Wayne, and State of Illinois, do hereby certify that the above-named S. J. R. Wilson, co. judge, and Thomas M. Scott, associate judge, personally appeared before me and acknowledged that they signed the foregoing mortgage, and for the purpose therein named.

Given under my hand and the seal of said court this the 20th day of April, A. D. 1859.

[SEAL.] J. W. BARNHILL, *Clerk.*

Filed 3rd May, 1859.

R. B. SLOCUMB, *Clerk.*

STATE OF ILLNOIS, *Wayne County, ss:*

I, John L. Handley, clerk of the circuit court and ex-officio recorder within and for the county of Wayne, and State aforesaid, do hereby certify that the above and foregoing is a true and perfect copy of a mortgage given by the county court of Wayne County, Illinois, to Isaac
233 Seymour, of the city and State of New York, as appears from the records in my office.

In witness whereof I have hereunto set my hand and official seal at my office, in Fairfield, this 3rd day of November, A. D. 1870.

[L. S.] JOHN L. HANDLEY, *Clerk.*

(Indorsed:) Filed November 7th, A. D. 1870. J. A. Jones, cl'k.

234 *Deposition of Richard L. Boggs.*

The deposition of Richard L. Boggs, of the county of Wayne, and State of Illinois, a witness of lawful age, produced, cautioned, and sworn and examined upon his corporal oath on the second day of November, in the year of our Lord one thousand eight hundred and seventy, at the office of James McCartney, in the town of Fairfield, in the county of Wayne, and State of Illinois, by me, James McCartney, a notary public of the county and State last aforesaid, by virtue of the notice or stipulation hereto attached, signed by Messrs. Stewart, Edwards, and Brown for Wayne County, authorizing evidence to be taken for certain purposes therein stated.

The said RICHARD L. BOGGS, being first duly sworn by me, as a wit, ness in said cause, previous to the commencement of his examination to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the plaintiff and the defendant, so far as he should be interrogated, testified and deposed as follows:

235 By Walter B. Scates, att'y for complainants:

Interrogatory first. Give your name, age, occupation, and place of residence.

Answer to interrogatory first. My name is Richard L. Boggs; my age is 58 years; my occupation is, a physician; my place of residence is in Wayne County, Illinois.

Interrogatory second. State how long you have resided in Wayne County, Illinois.

Answer to interrogatory second. I have resided in Wayne County, Illinois, thirty-one years.

Interrogatory third. State if you were acquainted with Isaac T. Vanduser, Barnard L. Voorhees, Norman A. Smith, Samuel J. R. Wilson, and Thomas M. Scott.

Answer to 3rd interrogatory. I was acquainted with all of them.

236 Interrogatory 4th. State if you are a subscribing witness to the contract made on the 19th day of November, A. D. 1858, between Isaac T. Vanduser, Norman A. Smith, and Barnard L. Voorhees, under the name, style, and firm of Vanduser, Smith & Co., and Samuel J. R. Wilson, county judge, and Thomas M. Scott, associate judge of Wayne County, Illinois; and if so, look upon the contract now shown you and hereto attached, marked as Exhibit "A," and state if the signatures thereto subscribed are the signatures of the parties purporting to sign the same.

Answer to interrogatory 4th. I am a subscribing witness to the said contract or agreement, and the signatures thereto were made in my presence, and are the signatures of the parties purporting to sign the same.

237 Interrogatory 5th. Do you know of the whereabouts of Isaac Seymour, either by common report or otherwise? and if so, state whether he is living or dead, and how you know it.

Answer to interrogatory 5th. By common report, I understand him to have been dead for eight or ten years.

R. L. BOGGS.

Certificate of James McCartney, N. P.

STATE OF ILLINOIS,
Wayne County, ss:

I, James McCartney, a notary public of the county of Wayne, and State of Illinois, before whom the foregoing deposition of Richard L. Boggs, a witness whose name is subscribed to the foregoing deposition, was taken, do hereby certify that, previous to the commencement of the examination of the said Richard L. Boggs as a witness in the suit between John W. Kennicott et al. vs. The Board of Supervisors of Wayne County et al., he was duly sworn by me to testify the truth in rela-
238 tion to the matter in controversy between the said John W. Kennicott et al., complainants, and The Board of Supervisors of Wayne County, Illinois, et al., *are* defendants, so far as he should be interrogated concerning the same. That the said deposition was taken in my office in the town of Fairfield, county of Wayne, and State of Illinois, on the 2nd day of November, A. D. 1870; and that after said deposition was taken by me as aforesaid, the interrogatories and answer thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Richard L. Boggs, before me, the oath being administered by me at the place and on the day and year last aforesaid.

JAMES McCARTNEY,
N. P. Wayne County, Illinois.

Deed trust. Exhibit "B."

239 Exhibit "B" referred to in foregoing bill.

County court to Isaac Seymour.

This indenture, made this twentieth day of April, one thousand eight

hundred and fifty-nine, between Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge, of the county court of the county of Wayne, and State of Illinois, parties of the first part, and Isaac Seymour, of the city of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth *the*—

Whereas the Congress of the United States duly passed an act, approved September the twenty-eighth, one thousand eight hundred
240 and fifty, entitled "An act to enable the State of Arkansas, and other States to reclaim the swamp lands within their limits," and, in pursuance thereof, the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for all the swamp and overflown lands within its limits, to be selected under the direction of the commissioners of the land office:

And whereas the legislature of the said State of Illinois passed an act, approved by the governor of said State, on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," which said act authorized the appropriation and disposal of said lands, for such purposes as may be deemed expedient by the courts or county judges:

And whereas the legislature of said State of Illinois passed an act, approved by the governor of said State on the fifteenth day of
241 February, one thousand eight hundred and fifty-five, entitled "An act to incorporate the Mount Vernon Railroad Company," whereby all such persons or corporations as should become stockholders under the provisions of the said act and their successors, were duly incorporated into a body politic and corporate under the name of the Mount Vernon Railroad Company; and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within said county of Wayne, in aid of the construction and maintenance of the said railroad as they may deem best for the public interest of said county:

And whereas, at a special term of the said county court of the county of Wayne, held on the twenty-eighth day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the said court whereby a special election was ordered and directed to be held on the fifth day of November, one thousand eight hundred
242 and fifty-five, for the purpose of taking the sense of the qualified voters of the county upon the mortgaging, that portion of the overflowed and swamp lands hereinafter described, for the purpose of aiding in the construction and maintenance of the said The Mount Vernon Railroad; and the said county court did then and there order public notice of such special election to be given, by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did propose a proposition, containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road; and did cause the said proposition to be printed at large as an election ticket, and furnished to the qualified voters of said county, to be used at such election, in the words and figures following, to wit: "For appropriating the
243 swamp lands of Wayne County, as a bonus to any company for building a railroad through Wayne county." "Against the same."

And the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said

charter and the laws of the said State of Illinois, and the returns thereof made, canvassed, and published, in all respects as other county elections are required to be in and by said laws:

And whereas the said proposition or plan above stated, received the highest number of votes and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "Yea" upon the said several printed propositions or ticket cast by them at the said election:

And whereas, upon the returns of the said special election being
244 duly made, canvassed and published as aforesaid, the said county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order, adjudge, and determine to execute a mortgage in conformity to such proposition or plan, and to the provisions of this instrument, to the parties of the second part, as trustee, upon the laws hereinafter described for the purpuse of aiding in the construction and maintenance of the said The Mount Vernon Railroad; which said order was duly made in open court, on the twentieth day of April, one thousand eight hundred and fifty-nine:

And whereas, by virtue of the said several acts and proceedings, the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands, for the purpose of aiding the construction and maintenance of the railroad of the said The Mount Vernon Railroad Company; and the said parties
245 deem it best for the public interest of said county of Wayne, that the lands hereinafter described should be conveyed to the party of the second part, trustee and commissioner, duly appointed and selected by both the said parties of the first part and the said The Mount Vernon Railroad Company, upon the terms and conditions hereinafter particularly set forth:

*K*now this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of one dollar to them in hand severally paid by said parties of the second part, at or before the *un*sealing and delivering of these presents, the *the* receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents, do grant, bargain, sell, remise, release, enfeoff, convey, and confirm unto the parties of the second part, and the survivors and survivors of them, and the heirs and assigns of such survivors, forever, all and singular the lands
246 and premises, situate, lying, and being in the county of Wayne, and State of Illinois, bounded and described as follows, that is to say:

Northeast quarter, southwest quarter, southeast of northwest quarter, all in section 3; west half of northeast quarter, southeast of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter, and southeast of southwest quarter, all in section 4; southeast quarter, north half of *southeast* quarter, west half of southwest quarter, southeast of southwest of section five; north half of northwest quarter, west half northeast quarter, southwest of northeast, northeast of southeast of section eight; west half of northeast quarter, northwest quarter, northeast of southwest, east half of northeast quarter, northwest of southwest quarter, southeast quarter of section 9; southwest of northeast, *west half*, west half of southeast of section 10; west half of northeast quarter, west half and southeast quarter of section 15;
247 northeast of southwest quarter, north half, east half of southeast,

northwest of southeast quarter of section 22; southwest of northwest quarter, southwest of southwest quarter of section 23; east half of southeast, west half of southwest, northwest of southeast quarter of section 25; southeast of northwest quarter, northwest of northwest quarter, east half of southwest quarter, and southeast quarter of section 26; west half of southwest quarter, southeast of southwest quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter, southeast quarter, northeast of southwest quarter, northeast of northwest quarter, and west half of northwest quarter of section 35; northwest of northwest quarter, half of southwest, northeast of northeast quarter of section 36, all of township one south, of range five east. South half of northwest quarter, west half of southwest
248 quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half of northwest quarter of section 2; east half of northwest quarter, northwest of southeast quarter, southeast of northwest of section five; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter of section 7; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, and south half of section eight; southeast of northeast quarter, southeast quarter of section 10; all of section 11; southeast of northwest quarter, northeast of northwest quarter, *southeast of northwest quarter*, west half of northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter of section 12; north half of northeast quarter, southwest of northeast quarter, west half and southeast quarter of section 13; all of section
249 14; east half southwest quarter, south half of northwest quarter of section 15; all of section 17; northwest of northeast quarter of section 18; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section 19; all of section 20; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section 21; north half, northeast of southwest quarter, west half of southwest quarter, east half of southeast quarter of section 22; all of section 23; all of section 24; all of section 25; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section 26; northeast quarter, southwest of southeast quarter, west half of *north of* northwest quarter of section 27; all of section 28; all of section 29; southwest of southwest quarter,
250 east half of northeast quarter, east half of southeast quarter of section 30; northeast quarter, south half of southwest quarter of section 31; northeast quarter, *of* southeast of southwest quarter, northwest of southwest quarter, northeast of southwest quarter, west half of northwest quarter of section 32; east half northwest quarter, east half of southwest quarter, northwest of southwest quarter, southwest of the southwest quarter of section 33; all of section 34; all of section 35; all of section 36, town two south, of range six east. All of section one; all of section 2; east half northwest quarter, east half southwest quarter, northwest of southwest quarter of section 3; southeast quarter, northeast of southeast quarter, west half of southeast quarter, east half of northwest quarter of section 4; east half southeast quarter, northeast quarter, west half of southeast quarter of section 6; north half
251 southeast quarter, north half southwest quarter, southeast of southwest quarter of section 7; northeast quarter, southeast of northwest quarter, east half of southeast quarter, northwest of south-

east quarter of section 10; southeast quarter, west half of northwest of southeast quarter of section 11; north half, north half of southwest quarter, southeast of southwest quarter, north half of southeast quarter, southwest of southeast quarter of section 12; northeast of northwest quarter, west half of northwest quarter of section 14; northeast quarter, east half of northwest quarter, northwest of southeast quarter, east half of southwest quarter of section 18, of township three south, six east. West half of northeast quarter, west half of southeast quarter, southeast of southeast quarter of section 2; all of section 3; all of section 4; all of section 5; all of section 6; all of section 7; all of section 8; all of section 9; all of section 10;
252 all of section 11; southwest of northwest quarter, south half of section 12; all of section 13; all of section 14; all of section 15; all of section 17; east half, east half of northwest quarter of section 18, of township three south, of range seven east. Southwest of southwest quarter, southeast of southwest quarter of section one; west half of northeast quarter, northwest quarter, south half of section 2; northeast, northeast of southeast quarter of section 3; northeast of northwest quarter, north half of section 4; north half, west half of southwest quarter, northwest of southeast quarter of section 5; northeast of the northwest quarter, north half of northeast quarter of section 7; northeast of northwest quarter half of northwest quarter, of section 8; east half of section 11; all of section 12; northeast quarter, south *south* half of southwest quarter, east half of southeast quarter, south-
253 west of southeast quarter, northwest of southwest quarter, *southwest of southeast quarter*, of section 13; northwest of northwest quarter of section 23; northwest quarter, northeast of southwest quarter of section 24, of township one south, of range eight. East half northwest quarter, southwest of northwest quarter, west half of southwest quarter of section 6; southeast of northwest quarter, west half of northwest quarter, northeast of southwest quarter, west half of southwest quarter, west half of southeast quarter of section 7; southeast of southwest quarter, southwest of southwest quarter of section 8; northeast of northwest quarter, half of northwest quarter, west half of southwest quarter of section 17, of township three south, of range eight. Southwest quarter, west half of southeast quarter, southeast of southeast quarter of section one; south half of section 2; southeast quarter, southeast of southwest quarter of section 3; west half south quarter section 6; the southeast of northeast quarter, west half of northeast
254 quarter, west half of southeast quarter of section 7; west half of northwest quarter of section 8; east half southwest quarter, northeast northwest quarter of section 10; all of section 11; north half, west half of southwest quarter, northwest of southeast quarter of section 12; southwest of southwest quarter, east half of southwest quarter, southwest of southeast quarter of section 13; all of section 14; east half of southeast quarter, southwest of southeast quarter of section 15; west half of northwest quarter, south half of section 17; all of section 18; north half southeast quarter of section 19; all of section 20; west half of northeast quarter, southeast of northeast quarter, west half of southeast quarter of section 21; east half, south half of northwest quarter, northwest quarter of section 22; northeast quarter, west half, east half southeast quarter, southwest of southeast q'r of section 23; west half of northeast quarter, west half, west half of southeast
255 quarter of section 24; northwest quarter, north half of southwest quarter, west half of northeast quarter of section 25; all of section 26; all of section 27; all of section 28; west half of northeast quar-

ter, southeast of northeast quarter, west half of southeast quarter of section 29; north half of northeast quarter of section 30; all of section 32; north half, west half of southwest quarter, northwest of southeast quarter of section 33; northeast quarter, northeast of northwest quarter, west half of northwest quarter, east half of the southeast quarter of section 34; west half of northwest quarter, northwest of southwest quarter, east half of southwest quarter of section 35; south half, *of* southwest of northeast quarter, southeast of northeast quarter of section 36, of town one south, of range nine east. West half of northeast quarter, northeast of northeast quarter, northwest quarter of section one; all of section 2; northwest quarter, east half of northeast
256 quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section 3; east half of northeast quarter, southwest of northeast quarter, west half, west half of southeast quarter, northeast of southeast of section 4; east half of section 5; southwest of southwest quarter of section 8; west half of northwest quarter of section 9; east half of northeast quarter, southwest of northeast quarter, northwest quarter, east half of southwest quarter, southeast quarter of section 10; northeast quarter, west half of section 11; west half of northwest quarter, northeast of northwest quarter, *northeast of northwest quarter*, west half of southwest quarter, southeast of northwest quarter of section 12; northeast of northwest quarter, northwest of northwest quarter of section 13; northeast of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section 14; northeast quarter, west half of section
257 15; west half of northeast quarter, northeast of northwest quarter, southeast of southeast quarter of section 17; east half northeast quarter, east half southeast quarter of section 20; northeast quarter, west half of section 21; northeast of northwest quarter, west half of northwest quarter of section 22; southeast of southwest quarter of section 26; west half of southwest quarter, southeast of southwest quarter of section 27; south half of northeast quarter, west half of southeast quarter of section 28; east half of southwest quarter, *east half of the southwest quarter* of section 29; southeast of *south* southwest quarter, half of southwest quarter, southwest of northwest quarter, south half of southeast quarter of section 30; west half of northwest quarter, southeast of northeast quarter of section 31; east half, *of* southwest quarter of northwest quarter, north half of southwest quarter, southeast of southwest quarter of section 32; all of section 33;
258 all of section 34; west half of southwest quarter, southeast of southwest quarter, northeast of northwest quarter of section 35; southwest of northeast quarter, east half of southeast quarter of section 36, township two south, of range nine east. Half northeast quarter, southwest of northeast quarter, south half of southwest quarter, southeast quarter of section one; west half of northeast quarter, southeast quarter, west half of section 2; west half of northeast quarter, south half of southeast quarter of section 3; east half, east half northwest quarter, southeast of southwest quarter of section 4; northeast of northeast quarter of section 5; east half of southwest quarter, southwest of the southeast quarter of section 7; northeast of southwest quarter, southwest of southwest quarter of section 8; east half of southwest one quarter, east half, east half of northwest *corner* of section 9; all of section 10; north-
259 west quarter, east half, west half of southwest quarter of section eleven; all or section 12; all of section 13; south half of northeast quarter, west half of northwest quarter, southeast of northwest, south half of section 14; all of section fifteen; northwest of northwest quarter

of section 17; north half of northeast quarter of section eighteen, of township 3 south, of range nine east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of north*west* quarter, south half of northwest quarter of section two; east half of southwest quarter, northwest of southeast quarter, southeast of northwest quarter of section 5; northeast of southeast quarter of section six; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, southeast
260 quarter of section 7; southeast quarter of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, southwest quarter, southeast quarter of section eight; southeast of northeast quarter, southeast quarter of section 10; all of section 11; northeast of northwest quarter, southeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter of section 12; north half of northeast quarter, southwest of northeast quarter, southeast quarter, west half of section 13; all of section 14; east half southwest quarter, south half northwest quarter of section 15; all of section 17; northwest of northeast quarter of section 18; south half northeast quarter, east half northwest quarter, southeast of southwest quarter, southeast quarter of section 19; all of section 20;
261 east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section 21; north half, *of* northeast quarter of southwest quarter, west half southwest quarter, east half of southeast quarter of section 22; all of section 23; all of section 24; all of section 25; east half northeast quarter, northwest northeast quarter, east half southeast quarter, southwest southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section 26; northeast quarter, east half southeast quarter, southwest of southeast quarter, west half of northwest quarter, *southeast quarter* of section 27; all of section 28; all of section 29; southwest of southwest quarter, east half of northeast quarter, east half of southeast quarter of section 30; northeast quarter, south half of northwest quarter of section 31; northeast quarter, southeast of northwest quarter, northwest
262 of southwest quarter, northeast of northwest quarter, west half of northwest quarter of section 32; east half, east half southwest quarter, northwest quarter, northwest of southwest quarter, southwest of southwest quarter of section 33; all of section 34; all of section 35; all of section 36, of township two south, of range six east. West half of northeast quarter, west half, west half of southeast quarter, southeast of southeast quarter of section two; all of section one; all of section 3; east half of southeast quarter, southwest of southeast quarter, east half of southwest quarter, east half of northeast quarter of section 4; east half of northeast quarter, northeast of northwest quarter, southwest of southeast quarter, northwest of southeast quarter of section 7; all of section 10; all of section 11; all of section 12; all of section 13; all of section 14; east half of northeast quarter, northwest of northwest quarter, north half of northwest quarter of
263 section 15; south half of northeast quarter of section 22; east half, east half of northwest quarter, northwest of northwest quarter, northeast of southeast quarter, southeast of southwest quarter of section 23; all of section 24; all of section 25; southeast quarter, southeast of northwest quarter, southwest of southwest quarter, southeast of southwest quarter, northeast of southwest quarter of section

26; northeast of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section 34; all of section 35; all of section 36, township one north, range nine east. South half, east half northwest quarter, northwest of northwest quarter, east half of southwest quarter of section 19; west half of northwest quarter, south half of section 20; south half of southwest quarter of section 21; east half of northeast quarter, east half of southeast quarter, southwest of southeast quarter of section 23; northeast quarter, west half of section 24; west half, west half of southeast quarter, southeast of south quarter, northeast of southeast quarter of section 25; east half of northeast quarter, northwest of northeast quarter of section 26; southeast of northeast quarter, southeast quarter, west half of section 28; west half of northeast quarter, northwest q'r, northeast quarter of southeast quarter, south half of southeast quarter, *south half of southeast quarter*, northwest of south west quarter of section 29; east half of northeast quarter, northwest of northeast quarter, northeast of southeast quarter, east half of northwest quarter, north half of southwest quarter, southwest of southeast quarter of section 30; northwest of northwest quarter of section 31; east half, northeast quarter, northwest of northeast quarter of section 32; northwest quarter, east half, northeast of southwest quarter of section 33; north half, northeast of southeast quarter, west half of southeast quarter, southwest quarter of section 34; west half of southwest quarter, southeast of southwest quarter of section 35; all of section thirty-six, township two, range nine east. Southwest of northwest quarter of section one; southeast of southeast of section 2; southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section 11; southeast of northwest quarter, west half of northeast quarter of section 14; southeast of southeast quarter, west half of southwest quarter, southeast of southwest quarter of section 26; northwest of northwest quarter, northwest of northeast quarter of section 35, township one north, of range five east. Southwest of northwest quarter, south half of southwest quarter of section 36, township two north, of range five east. East half lot one, northeast quarter, section six; southeast of southeast quarter of section 13; southeast of northwest quarter, south half of northeast quarter of section 24; west half of northeast quarter of section 25; east half of northwest quarter of section 35, township one north, of range six east. Southeast of southeast quarter of section 19, township two north, of range six east. East half of southeast quarter, southwest of southeast quarter of section one; northwest of northeast quarter, east half of northeast quarter of section 12; northwest quarter of section 19; southeast of northwest quarter, southwest of northeast quarter, west half of southeast quarter of section 21; southwest of southwest quarter of section 27; east half and southwest of northeast quarter of section 28; southwest of northeast quarter of section 35; southeast of northeast quarter of section 36, township one north, of range seven east. Southeast of southwest quarter of section 21; north half of southeast quarter, west half of southeast quarter of section 22; southeast of southeast quarter, southeast of southwest quarter, northwest of southwest quarter of section 23; southwest of northwest quarter, west half of southwest quarter, southeast of southwest quarter of section 24; southwest of northwest quarter, southwest of southeast quarter, northwest of southwest quarter of section 25; northeast of northeast quarter, northeast of southeast quarter of section 26; west half of northeast quarter, southeast of northeast quarter, northeast of southeast quarter of section 36, township two north, range

seven east. Southeast of southeast quarter of section 5; lot one northwest (containing sixty-six acres) section six; northeast of southwest quarter of section 6; lot two northwest quarter, (containing fifty-two acres,) southwest of northeast quarter, section 7; southeast of
268 southwest quarter, southwest of southwest quarter of section 8; southwest quarter of section 22; southeast of southeast quarter, southwest of southwest quarter of section 26; northwest of northwest quarter of section 27; northeast of northwest quarter, east half of northeast quarter of section 28; all of section 34; west half of northwest quarter, southeast of northwest quarter, southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section 35; northwest of northwest quarter of section 36, township one north, of range eight east. Northwest of northeast quarter, northwest quarter, east half of southeast quarter of section 31, town two north, of range eight east. Southwest of northwest quarter, east half of southwest quarter, northwest of southwest quarter, northeast quarter, northwest of southwest quarter, southwest of southeast quarter, east half of
269 southeast quarter of section 10; north half, west half of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section eleven; east half, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section 12; northwest of northeast quarter, north half northwest quarter of section 13 northeast quarter, east half of northwest quarter, northwest of northwest quarter of section 14; northwest of northeast quarter, northwest quarter, northeast of southwest quarter, southwest of southeast quarter, west half southwest quarter, southeast of southwest quarter of section 25; southwest of northwest quarter, south half of section 28; east half of southeast quarter of section 29, township two south, of range five east. The whole containing one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred acres pre-'mpted.

270 In trust for the uses and purposes directed in said act of incorporation, in the words following, that is to say:

First. To secure and guarantee the constructing, completing, and furnishing said road and branch *is*, in the manner and time, and upon the condition in the act of incorporation of said company provided, for the faithful application all money or property arising from the sale of lands, or obtained upon the faith of the same, as hereinafter authorized, to the constructing, completing, equipping, and furnishing said road and branches, in accordance with the terms of said act of incorporation.

Second. A portion of said lands so conveyed to said trustee, not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by said trustee, free from encumbrances, for purposes of sale, from time to time, on the requisition of said company, for the purpose of raising funds for the payment of interest
271 on loans, in case of deficiency from other sources, and for such other expenditures as the exigencies of the business of the company may require, provided that no portion of said fourth part of said lands shall be sold until said road and branches shall have been actually finished.

Third. For the purpose of raising funds, from time to time, for the construction and completion of said road and branches, and the purchase of iron and other materials to be used therein, said company may issue its bonds, countersigned by the said trustee, in sums of not less than five hundred, or more than one thousand, dollars each, at rates

of interest not higher than seven per centum per an'um, payable semi-annually, the principal of said bonds payable in the year one thousand eight hundred and seventy-four, at such place as it shall designate.

The payment of said bonds shall be secured by a mortgage of the
272 lands, as hereinbefore provided for, which said mortgage shall be a prior lien, and shall be referred to and recited in said bonds so to be issued by said company, it being understood and agreed that the said county court shall and will make, execute, and deliver to the said trustees such proper deed, conveyance, declaration of trust, or other assurance, as shall from time to time be necessary and proper, and as their council learned in the law shall reasonably advise, for the better carrying into effect the true object of this indenture, and of securing by mortgage the payment of each and of all said construction bonds in manner and form in such additional instrument, to be fully and at large set forth and declared with the same effect and certainty as if the provisions thereof had been embodied and set forth in this indenture:

To have and to hold all and singular the above granted and
273 described premises, with the appurtenances, to the said Isaac Seymour, trustee as aforesaid, and to his successors, until all the uses and trusts, hereinbefore set forth and declared, shall be fully and completely accomplished, and the said trustee shall only be accountable for the exercise of reasonable diligence in the management of said trust.

In testimony whereof the said party of the first part have caused their seal to be *here* hereto affixed, and the president and secretary have subscribed their names the day and year first above written.

S. J. R. WILSON, *Co. Judge.*
THOMAS M. SCOTT.

STATE OF ILLINOIS, *Wayne County:*

I, J. W. Barnhill, county clerk in and for the county of Wayne, and State of Illinois, do hereby certify S. J. R. Wilson, county
274 judge, & Thomas M. Scott, associate judge, personally appeared before , and acknowledged that they signed the foregoing deed of trust for the purposes therein named.

Given under my hand and seal of office this 20th day of April, A. D. 1859.

[SEAL.] J. W. BARNHILL, *Clerk.*

Filed 3d May, 1859.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, *Wayne County:*

I, R. B. Slocumb, circuit clerk in and for the county of Wayne, and State of Illinois, do hereby certify that the above is a true and correct copy of the foregoing deed, as appears from the record in my office.

Given under my hand and official seal, at Fairfield, this 19 day of January, 1864.

R. B. SLOCUMB, *Clerk,*
[L. S.] By J. A. LINVILLE, *Deputy.*

(Indorsed:) Filed March 7, 1865. P. P. Enos, cl'k.

275 *Order for clerk to give notice of election.*

September special term, A. D. 1855.

Ordered that the clerk of this court be required to advertise for a poll

to be opened at the ensuing November election, that the people may vote for or against the county court of said county giving as a bonus twenty-five hundred acres of our swamp lands per mile to any responsible company that will build a railroad through said county, commencing at a suitable point on the Central Railroad, and running east by the way of M't Vernon and Fairfield to the East line of Wayne County, or to Mount Carmel, on the Great Wabash River.

Ordered that the Independent Press, and all other papers favorable to a railroad on said contemplated line, and extending thence to Saint Louis, be requested to publish the foregoing order.

October special term, A. D. 1855.

Whereas at a meeting of the citizens of Wayne County, held at the court-house in Fairfield, on Saturday the 6th inst., for the pur-
276 pose of taking into consideration the subject of our swamp lands as a bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair, and appointing Thomas Lowery secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way, therefore—

Resolved, That the said county court be requested to order a vote "For a railroad" and "Against a railroad," and if the majority of the votes in the county be cast for a road, the said county court shall give our swamp lands, or such part thereof as shall be necessary to secure the building of a railroad through Wayne County.

It is therefore ordered that the clerk of this court be required
277 to advertise for a poll, to be opened at the different precincts of Wayne County, at the ensuing November election, that the electors may vote for a railroad and against a railroad, in pursuance of the foregoing resolution.

278 April special term, 1859.

And now, on this day, the court executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne County. The conditions and provisions of said trust deed will more fully appear by referring to said trust deed, which is entered of record in the recorder's office of said county, in mortgage book B, page' 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour, as collateral security, to enable the Mount Vernon Railroad Company to procure money to build a railroad through Wayne County, from the eastern boundary of said Wayne County to Mount Vernon, in Jefferson County; and which mortgage is refer'ed to and recorded in the recorder's office of said Wayne County, in mortgage book B, pages 341 to 359.

279 And it is ordered by the court that Samuel J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymour, trustee as aforesaid, in the said county of Wayne.

Ordered that the court adjourn till court in course.

S. J. R. WILSON, *Co. Judge.*
THOMAS M. SCOTT.

In the county court of Wayne County, Illinois.

STATE OF ILLINOIS, *Wayne County, ss:*

I, Oliver Holmes, clerk of the county court in and for said county of Wayne, and State of Illinois, do hereby certify that I have compared the foregoing copy of orders and proceeding had by the county court of said county, at the several meetings of said court as aforesaid, with the records thereof remaining in my office, and have found the same to be a correct transcript therefrom.

In testimony whereof I have herewith set my hand and official seal, at my office in Fairfield, this 8th day of December, A. D. 1869.

[L. S.] OLIVER HOLMES,
County Clerk.

[Int rev., O. H., Dec. 8, 1869, 5 cents.]

280 April special term, 1859.

At a special term of the county court of Wayne County, began and held at the court-house in Fairfield, on the 20th day of April, 1859—

Present, Hon. S. J. R. Wilson, judge; Tho. M. Scott, associate; J. W. Barnhill, clerk.

Order of county court of Wayne County.

And now, on this day, the court executed to Isaac Seymore, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne County. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, which is entered of record in the recorder's office of said county in mortgage book "B," pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymore, as collateral security, to enable the M't Vernon Railroad Company to procure money to build a railroad through Wayne, from *from* the eastern boundary of said
281 Wayne County to Mount Vernon, in Jefferson County; and which mortgage is referred to and is recorded in the recorder's office of said Wayne County, in mortgage book "B," pages 341 to 359.

And it is ordered by the court that Sam'l J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymore, trustee as aforesaid, in the said county of Wayne, State of Illinois.

WAYNE COUNTY, *ss:*

I, Oliver Holmes, clerk of the county court in and for the county aforesaid, do hereby certify that the foregoing is a true and correct copy of the record of said court at said special term, as appears from the records of court in my office, at Fairfield, this 2nd day of September, A. D. 1869.

[L. S.] OLIVER HOMLES, *Clerk.*

[5-ct. int. rev. stamp, canceled Sept., 1869.]

282 *Deposition of Angus M. Grant.*

ANGUS M. GRANT, being introduced and duly sworn, deposeth as follows, to wit:

My age is 55 years. I have lived in this place 32 years. I was secretary of the Mount Vernon Railroad Company from the 30th day of May, A. D. 1859, and have been ever since. Some of the books and files of the company came into my hands as such secretary. The only book of the company now in my possession is that of the proceedings of the commissioners and board of directors, so far as they were entered in this book, a copy of which is hereto attached as Exhibet "A," and made a part of my deposition. There were never in my possession any minutes or loose files of the Mount Vernon Railroad Company,
283 or of the Belleville and Fairfield Railroad Company, of any meeting or meetings held during the years 1855 and 1856, or at any meetings prior to 1858. I had at one time another book in my possession, in which, I think, were recorded all the proceedings, from the first organization of the company up to about the year 1857, and a part of which, I think, is embodied in the paper hereto attached, marked "A," but which book was taken from my possession for the purpose of beginning some suits against the said railroad company in the circuit court of Jefferson County, since which time I have made some enquiry for it, but have been unable to find it. There were two other books, kept in New York, in one of which was kept an account of the transfers of stock, and in the other was kept the minutes of the proceedings of the derectors in that city, which two books were kept by the said company after the organization by the contractors in the 1858. I was
284 in New York in the winter of 1859 and 1860, I think, at which time I saw the said two books, but have not seen them since. They were at that time in the possession of N. A. Smith and Ira Hersey. Smith was treasurer, and Hersey was transfer agent of the company at that time, and both were directors. At the time I was in New York, above referred to, I, as secretary, signed a contract made by the company with a man by the name of Morris, or Morrison, for money to buy railroad iron. Said Morris, or Morrison, furnished money to b'y the iron, the amount of which was the amount agreed upon in a contract between the company and Crippin, Kendrick, and others for railroad iron. The money was paid over in my presence, and bonds of the railroad company were either paid to Morris, or Morrison, or hypothecated to him for repayment. Judge Wilson, of Wayne County, was present at all of this transaction, and knew all about it. I never heard
285 any objection made by him to the transaction, but he seemed to be very well pleased with it.

Interrogatory. Look upon the paper now shown you, hereto attached, and marked as Exhibet "B," and state all that you recollect in relation to the execution of the deed of trust and mortgage therein referred to.

Ans. I was there at the time said instruments were executed. Gov. Casey and Voorhees were also there, and I think, perhaps, Van Duzen was also there. Judge Wilson and a man by the name of Scott, to whom I was introduced as the associate justice, were also there, and executed the contract on behalf of the county, as I understood it. Zadok Casey, Thomas M. Casey, John M. Johnson, Stierson H. Anderson, John R. Allen, have all been dead some years, except Thomas M. Casey, who died several months ago.

(The introduction of Exhibet "B," and the testimony in relation thereto, objected to by C. A. Beecher, esq., att'y for def'ts.)

ANGUS M. GRANT.

Subscribed and sworn to this 7th day of September, 1869.

J. W. BAUGH,
Notary Public.

286 *Election of directors of Mt. Vernon R. R. Co.*

At a meeting of the stockholders of the Mount Railroad Company, held at Mt. Vernon, Jefferson County, Illinois, under the provisions of the charter of said company, approved February 15th, 1855, and in pursuance of the call and notice of a majority of the commissioners, on this 13th day of November, 1855, Zadok Casey and John R. Allen, two of said commissioners, acting as judges of said election, it appeared that the whole amount subscribed to said stock is the sum of eighteen thousand one hundred dollars, which being more than one thousand dollars per mile of the line of said railroad, said commissioners, as judges of said election, proceeded to take the votes of subscribers for seven directors of said company; when, the ballots being counted, it appears that the whole number of votes given is one hundred and sixty-five; necessary to a choice, eighty-three; and
287 that Walter B. Scates had one hundred and fifty-five, John R. Allen one hundred and thirty-eight, Downing Baugh had one hundred and thirty-one, Newton R. Casey had one hundred and twenty-five, John N. Johnson had one hundred and fourteen, Timothy Condit had one hundred and eight, and Hezekiah B. Newby had eighty-four votes, each of whom, having a majority of the votes cast, were duly elected directors of said company.

Given under our hands this 13th November, 1855.

Z. CASEY,
JOHN R. ALLEN,
Comm'rs s'd Election.

Meeting of board of directors Mt. Vernon R. R. Co.

WEDNESDAY, 14*th Nov.*, 1855.

The board of directors met pursuant to appointment—

Present, W. B. Scates, T. Condit, J. R. Allen, N. R. Casey, and D. Baugh.

288 On motion, D. Baugh was appointed secretary of this meeting.

On motion, W. B. Scates was elected president of the board of directors.

On motion, D. Baugh was appointed secretary of the board of directors.

On motion, John R. Allen was appointed treasurer of said board.

On motion, the section line dividing sections 29 and 32 at Mount Vernon, running thence west, with such variations as may be necessary to reach Ashley, in Washington County, be adopted as a line for the time being, purpose of procuring the right of way.

Ordered, that Z. Casey and N. Johnson, and each of them are hereby appointed an agent to solicit and procure of the proprietors of land a distance of one hundred feet of right of way to said company for a half mile in width on each side.

On motion adjourned inst. at two o'clock, p. m.

289 *Meeting of board of directors of M't Vernon R. R. Co.*

MOUNT VERNON, *Dec. 6th*, 1855.

At a meeting of the president and directors of the M't Vernon Railroad Company—

Present W. B. Scates, pres't, Timothy Condit, John R. Allen, Newton R. Casey, D. Baugh.

On motion a by-law was adopted for the election of directors to fill vacancies.

W. B. Anderson was elected a director to fill the vacancy occasioned by the death of John N. Johnson.

Adopted a resolution requesting A. M. Grant and W. B. Anderson to survey line from M't Vernon to Fairfield.

Adjourned until Saturday the 8th inst.

D. BAUGH, *Sec'y.*

M'T VERNON, *Oct.* 18*th*, 1858.

The M't Vernon Railroad Company met pursuant to call by the president—

290 Present Hon. W. B. Scates, pres't, H. B. Newby, W. B. Anderson, J. R. Allen.

On motion, C. P. Pace was appointed secretary, pro. tem.

On motion to fill vacancy occasioned by the removal of T. Condit, D. Baugh, and N. R. Casey, Messrs. H. T. Pace, Z. Casey, and W. Duff Green were elected.

On motion—

Resolved, That the following by-laws be adopted:

The mode of tranferring stock shall be by written assignment thereof in a book for that purpose, to be kept by the secretary.

At any election for directors of the company, none shall be entitled to vote, except those who appear to be stockholders by the transfer book.

A transfer of stock on the books of the company shall discharge the stockholder making it from all liability for any balance that may be due and unpaid for said stock, and the party to whom the same is transferred shall become liable for all balances due therefrom to the company.

291 Ordered that the secretary procure two suitable books, one for recording the minutes of the stockholders' meetings and the hoard of directors, the other for the transfer of stock.

Transfer of stock shall only be authority in writing, when done by an attorney.

The board of directors shall hold their office for one year, and until their successors are elected.

On motion, adjourned to meet to-morrow evening at 4 o'clock.

C. T. PACE,
Secretary pro. tem.

Meeting of board of directors of M't Vernon R. R. Co.

M'T VERNON, ILLINOIS, *October* 19*th*, 1858.

Pursuant to a call of the stockholders of the Mount Vernon Railroad Company, and an adjourned meeting of the directors of said company, the stockholders met at Mount Vernon, Jefferson County, Illi-
292 nois, on the 19th day of October, A. D. 1858 for the purpose of electing a president, secretary, treasurer, and directors for said company, for the ensuing year.

Present, Barnard L. Vorhies, Norman A. Smith, Isaac T. Van Duzen, Isaac D. Gentchius, and W. D. Green, representing twenty thousand dollars in the stock of said company.

On motion, Barnard L. Vorhies was elected president, pro. tem. and I. D. Gentchius, secretary.

The stockholders then proceeded, by ballot, to elect the officers of said company for the ensuing year, when Barnard L. Vorhies was elected

president; Isaac D. Gentchius, secretary; Norman A. Smith, treasurer, and Barnard L. Vorhies, Norman A. Smith, Isaac T. Van Duzen, I. D. Gentchius, Zadok Casey, Angus M. Grant, and George G. Rockwood, were elected directors for the ensuing year.

On motion, adjourned to meet on the 4th day of December, A. D. 1858.

I. D. GOETCHIUS,
Sec. pro tem.

293 M'T VERNON, ILLINOIS, *4th Dec.*, 1858.

At a meeting of the Railroad Co., directors of, held at M't Vernon, the 4th day of December, 1858, *at M't Vernon*—

Present, I. T. Van Duzen, N. A. Smith, B. L. Vorhies, I. D. Goetchius—the chair was occupied by the president.

Resolved, That the by-laws be presented at the next meeting of the board by N. A. Smith.

Meeting adjourned to meet on 11th inst.

I. D. GOETCHIUS,
Secr.

Meeting of board of directors of M't Vernon R. R. Co.

M'T VERNON, ILLINOIS, *Dec. 12th*, '58.

Pursuant to adjournment, the board met—

Present, B. L. Vorhies, I. T. Van Duzen, Gov. Casey, N. A. Smith.

In absence of sec'y, N. N. Smith chosen sec. pro tem.

By-laws offered by N. A. Smith.

294 Amendment offered by Gov. Casey and adopted, with amendment.

Moting made and carried, that Mr. I. T. Van Duzen is general super*tenurd* of the work.

Adjourned to meet at the company's office, Thursday eve. 7 o'clock.

I. D. GOETCHIUS.

By-laws of board of directors M't Vernon R. R. Co.

M'T VERNON, *Dec. 12th*, 1858.

BY-LAWS.

ANNUAL MEETING.

The annual meeting of the stockholders for election of directors shall be held on the first Monday in November, in each and every year, at the comp's office in M't Vernon.

OFFICERS OF THE BOARD.

The officers of this comp. shall consist of pres'd', sec't', trea*us*.

The pres'd' shall be elected by the board of directors, and shall hold his office for one year. He shall be presiding officer of the board; shall have a general supervision of the affairs of the comp., and see that the orders and resolutions of the board are carried into effect.

295 The duties of the sec. shall be to give public notice of the annual meeting of the stockholders, notice of all special meeting' of

the board. He shall keep a true and fair record of their proceedings in a book prepared for that purpose, and safely keep all documents and papers which shall come into his possession as sec't'.

It shall be the duty of the treas. to safely keep and account for all monies, funds, and property of the comp. which shall come to his hands, and present such statement and render such acts to the directors as may from time to time be required of him; he shall pay out any monies in his hands belonging to comp. only upon the order of the pres. or by vote of the board.

In absence of the pres. all bills shall be audited by the sup. of the work.

Ordered, The pres. shall hold his office for the term of one year, or until his successor is elected by the board.

I. D. GOETCHIUS.

296 *Meeting of board of directors M't Vernon R. R. Co.*

M'T VERNON, ILLINOIS, *Dec. 16th*, 1858.

Pursuant to adjournment the board met at 7 o'clock, Dec. 16, '58—

Present, Messrs. Gov. Casey, B. L. Vorhees, N. A. Smith, I. T. Van Duzen, I. T. Goelctrius.

Gov. Casey called on Mr. N. A. Smith, for a report from Richview, which was given.

Motion made by Gov. Casey, and carried by the board, that some definite point be decided upon to commence securing deeds for right of a way of railroad from M't Vernon to Ashley.

Motion made by Mr. Van Duzen, and carried, that the chief engineer, present to the board a profile of location of route as far as located.

Also a motion made by Dr. N. A. Smith, that a preparatory step be taken to establish a telegraph line along the line of said road, and carried.

Meeting adjourned to meet at the comp. office, on Thursday, Dec. 23, (evening,) at 7 o'clock.

297 At a meeting of the directors, held in M't Vernon, on the 4th day of Dec., 1858—

Present, I. T. Van Duzen, N. A. Smith, B. L. Voorhies, and I. D. Goetchius.

The chair was occupied by the president.

Resolved, That a committee be appointed to frame by-laws and present the same to the board the next meeting.

N. A. Smith was appointed a com't' of one. Meeting adjourned to meet on 11th inst.

I. D. GOETCHIUS, *Sec.*

Meeting of board of directors of M't Vernon R. R. Co.

Persuant to adjournment, the board met at the company's office, Feb. 28th, '59—

Present, B. L. Vorhies, N. A. Smith, Gov. Casey, A. N. Grant, I. T. Van Duzen, I. D. Goetchius.

Resolved, That the secretary present to Gustavus Wagner, as chief engineer, his discharge, which was unanimously carried by the board.

N. A. Smith reported his progress of negotiations in New York, which was done and accepted by the board.

Moved and carried by the board, that J. L. Germain be employed

298 as chief engineer, at a salary of two hundred dollars per month; one hundred dollars cash, and 100 dollars in land at going rates of the company's land.

Resolved, That a copy of the discharge of Gustavus Wagner, engineer-in-chief, be recorded by the secretary.

Whereas the engineer-in-chief, Maj. G. Wagner, has rendered himself incompetent for the office of chief engineer by intemperance, neglecting his business, wasting time, money, and labour, not properly control'ing the men under his charge, and not rendering to the company calculations and quanities, though repeatedly requested; therefore

Resolved, That he is discharged from the office of chief engineer of this road, and from the employ of the company, and that the sec't' serve him with written notice of the same.

I. D. GOETCHIUS, *Sec't'*.

Moved and carried that the meeting adjourn to meet at the company's office at 9 o'clock, March 1st, 1859.

I. D. GOETCHIUS, *Sec't'*.

299 *Meeting of board of directors of M't Vernon R. R. Co.*

Persuant to adjournment, the board met at the comp. office, March 1st, 1859—

Pres' B. L. Voorhies, N. A. Smith, A. N. Grant, Gov. Z. Casey, I. T. Van Duzer, I. D. Goetchius.

Resolved that, *by the Board of the M't Vernon Railroad Company*, That Barnard L. Voorhees, the president of said company be, and he is hereby, authorized and empowered, with full power and authority to issue the bonds of said company to the amount of eight hundred thousand dollars, ($800,000,) bearing seven per cent. interest per annum, payable semi-annually at any banking-house in the city of New York; and for the security of said bonds, and the payment of the interest accruing thereon, the said president shall make or cause to be made to a competent trustee or trustees, to be by him appointed, a mortgage of the line of said railroad, together with all its appurtenances, right of way, depot grounds, and buildings thereon, rolling stock, machinery and tools, which are now or may hereafter become the property of said com-

300 pany, and belonging to said road.

Resolved, That, further to secure the payment of said bonds and the interest accruing thereon as aforesaid, the pres. of said company be, and he is hereby, authorized and empowered, with full power and authority, to procure and cause to be delivered to the said trustee or trustees, a deed of mortgage of and to the lands granted by the county of Wayne, and State of Illinois, to the said railroad company.

Resolved further, That the president of said company be, and he is hereby, authorized to appoint a commissioner to act with said trustee or trustees in conveying or disposing of said lands.

Resolved, That the president shall have the power to deed or convey all real estate and personal property belonging to the company by and with the consent of the directors.

Resolved, That the president shall procure a deed of four thou-

301 sand acres of land from the county of Jefferson and sell or negotiate, by mortgage, the same, *by mortgage*, for a sum not to exceed eight thousand dollars, ($8,000.)

I. D. GOETCHIUS, *Sec't.*

Meeting of board of directors of M't Vernon R. R. Co.

Pursuant to adjournment, the board met at the company's office, April 18th, 1850, at 9 o'clock—

Present, B. L. Vorhees, A. N. Grant, Gov. Z. Casey, I. T. Van Duzen, I. D. Goetchius. April 18th, 1859.

Resolved, That the contract of the attorney of the M't Vernon Railroad Company, N. A. Smith, esq., with Ira Hersey, esq., of New York City, on the subject of the construction of the M't Vernon Railroad be, and the same is hereby, approved by the board of directors of M't Vernon Railroad Company.

I. D. GOETCHIUS, *Sec't.*

APRIL 18, 1859.

At a special meet' of the board of directors held this—present, Gov. Z. Casey, A. N. Grant, B. L. Vorhees, I. T. Van Duzen, I. D. Goetchius.

302 *Moments* of last meeting read and approved.

Mr. I. T. Van Duzen presented to the board a letter from Doct. N. A. Smith, treasurer, which was read.

Contents of letter produced.

Letter from N. A. Smith to president & directors of M't Vernon R. R. Co.

Letter.

NEW YORK, 7, 1859.

To the president and directors of the M't Vernon Railroad Company, M't Vernon, Ills:

GENTLEMEN: Since I last had the pleasure of addressing you, I have, as your are aware, spent most of my time in this city directing the drawing of the mortgages on the road and land in Wayne County, which I trust you will see duly executed on the part of the railroad company and of Wayne County, and immediately forwarded by express to Ira Hersey, esq., of this city.

Mr. Seymore, the gentleman named as trustee, is the cashier of the Bank of North America—a man well known and in whom all have the fullest confidence. The mortgages are drawn, you will ob-

303 serve, with great fairness to all parties.

I have ordered the lithographing and printing of the bonds which will be ready for signatures by the time the mortgages are returned. I have to report that railroad bonds and their securities are looked upon with great suspicion by the leading capitalists of this city and it has been with great difficulty that I have been able to secure of an able, responsible, and suitable agent for the negotiation of our bonds and to act, in all other matters, as the agent of our company in this city.

I have closed this arrangement with Ira Hersey, esq'r., under the power of attorney given to me in December last. A copy of our agreement with Mr. Hersey I hereby enclose, which please enter upon the minutes and approve in due form.

In making this arrangement with Mr. Hersey my judgement dictated me to give him for his services an undivided one-fifth interest in the

road instead of the usual commission of 5 per cent. for these reasons:

304 First. It makes it his interest to quickly and faithfully perform all business of the company, because his pay is dependant on the success of the enterprise; whereas if his pay was a simple commission it would end his interest as soon as fees were retained.

Second. To deduct commission from all monies raised by him would absorb a large amount of ready money which should be applied and absorbed in constructing our road and not in commission.

Third. 5 per cent. commission on negotiations of bonds and purchase of iron and materials would draw from the monied revenue of the company full $60,000 which will do the road more good spent on it than paid in commission.

Fourth. Mr. Hersey being in full connection with the class of persons who create or depress the value of railroad property will, from self interest (the strongest interest in the world) create a higher value on our whole property.

305 Fifth. A personal connection with him and his influence will more surely complete our work.

Sixth. It adds to our number a watchful partner who will mater'ley assist in preserving the rights to all interested.

Seventhly. It will make our employees, the committee of Jefferson and Wayne counties, feel more sure of their road.

Now gents, in conclusion, I will say, Mr. Hersey has given, and I have seen, reference of undoubted characters, responsibility, fitness for the position he has assumed, which to me are, and will be to all interested, perfectly satisfactory. If you wish for further information he has permitted me to say to you that Cortland Palmer, esq., of this city a very wealthy highly respectable gentleman of this city, you are at liberty to use as his reference.

Permit me to say that we will be enabled to prosecute our work with diligence just as soon as our bonds are issued for our basis.

306 Resp't. your ob't serv't,

N. A. SMITH.

Meeting of board of directors of Mount Vernon R. R. Co.

Pursuant to adjournment, the board met at the company's office, April 19th, 1859—

Present, Gov. Z. Casey, A. N. Grant, I. T. Van Dusen, B. L. Voorhees, I. D. Goetchiu.

On motion, *Resolved*, That there be a vice-president of the Mt. Vernon Railroad Company *be* appointed to assist the president in the discharge of his duties, and to perform such duties as may be required of him by the board.

Mr. B. L. Vorhees tendered his resignation as president of this board, which was accepted; when, upon motion—

Z. Casey was appointed president of this board, to fill said vacancy.

On motion, Mr. B. L. Voorhees was appointed vice-president of the company.

Mr. B. L. Vorhees offered the following preamble and resolution, to wit:

Whereas it has become expedient and necessary, for the pur-
307 pose of prosecuting the further construction of the Mt. Vernon Railroad, to negotiate stock and bonds of the company; therefore—

Resolved, That the capital stock of the company shall be $1,000,000.

Resolved, That the president and secretary be, and they are hereby, authorized to transfer 200,000 dollars of the stock of the company to Ira Hersey, esq., of New York City, in fullfilment of contract made by company through N. A. Smith, att'y of said company, at any time said Hersey may call for the same.

Resolved, On motion of Mr. B. L. Vorhees, that the president and treasurer of the Mt. Vernon Railroad Co. be, and they are hereby, authorized and empowered to sign all bonds that may be issued by said company.

On motion the board adjourned.

I. D. GOETCHIUS, *Sec'y.*

Pursuant to adjournment, the local board met by request of the president, May 10th, 1859—

308 Present, Hon. Z. Casey, B. L. Vorhees, N. A. Grant, I. T. Van Duzen, I. D. Goetchius.

Motion by the president, and carried, that L. D. Germain write out a code of rules and regulations for the construction of the Mt. Vernon Railroad, and submit them to the board for inspection and their consideration.

Motion made by N. A. Grant, that the company (Van Duzen, Smith & Co.,) go in arbitration with Gustavus Wagner. Carried.

On motion by N. A. Grant, that the president, Hon. Z. Casey, invite the grand jury and court to take a trip on the Mt. Railroad, to view the progress and quality of the construction of the road.

On motion the board adjourned.

I. D. GOETCHIEU, *Sec'y.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MAY 10, '59.

Pursuant to adjournment, the board met by request of the president—Present, Hon. Z. Casey, A. N. Grant, B. L. Vorhees, I. D. Goetchius, and I. T. Van Duzen.

Mr. Vorhees offered the following resolutions:

Resolved by the president and board of directors of the Mt. Vernon
309 *Railroad Company*, That the chief engineer of this company have consigned to him, under direction of the board, the control of the works of this company, and that he be held responsible to this board, or to its authorized committee or superintendent, whose written instructions shall always govern his proceedings when it shall be deemed expedient for the board, its committee, or superintendent, to give him special directions. Further, that the chief engineer be required to lay before this board, its authorized committee, or superintendent, all necessary plans for the construction of the work of this company, with appraiser's rate, estimates of the same; that plots and profiles of all lines or routes examined by him or by his orders be submitted to this board, with such comparative estimates upon the cost of the same as shall be practicable for him to furnish; that the responsibility of all recommendations, plans proposed, accuracy of details submitted, be and are hereby placed upon him, that due responsibility may be had in the constructing office of this company.

310 *Resolved further*, That all orders and directions to former agents, master mechanics, and others employed in the construction of this work shall come from him and be given by him in person, or be transmitted through his approved assistants, each of whom this board do most strenuously urge and require at their hands the utmost economy

in the execution of the work and operations connected with the construction of our works. That the personal attention of the chief engineers be required to be given to the details of each and every department under his charge. That he be required to build firmly, durably, and as economically as the nature of our designs will warrant or require. Further, that the report to this board without delay the name, station, duty, compensation, when placed, of each engineer, agent, and foreman in *the* employ, acting within or on account of construction, and that it shall be his duty to certify to this board, its committee or superintendent, all bills for engineering, agents, foreman, work done under
311 contract by them, or under their authorized directions, on account of construction. That no account, bill, or estimate, for the benefit or on account of any such employed on construction be audited or paid by this company until after the same shall have been examined and certified to by the chief engineer. That it shall be the duty of the chief engineer further to draw up, under the advice of the proper legal officer of this board, all contracts and specifications for the construction of the work under his charge, and submit the same to this board, or its appropriate committee or superintendent, and that no contract for such purpose shall be valid or authorized by this board which does not bear the signature of the president or vice-president and that of the chief engineer, unless by special resolution of this board.

Resolved further, That the chief engineer shall be *resigned* to take duplicate copies of all vouchers, contracts, bills, estimates, plots, maps, and plans, and letters of instructions, one of which he shall keep on file
312 in his office, the other he shall furnish to the office of the president, or as he shall be directed by this board. And further, that he furnish to the proper auditing office of this company a monthly estimate of all work done on the line of work authorized by the board, and that this be done on or before the tenth day of the succeeding month, and further prepare a succinct statement of the general operations of his department, and present the same for consideration at each regular meeting of this board, of which he shall be required to attend as an official member.

I. D. GOETSCHEIUS, *Sec'y.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON, *May 30th*, 1859.

At the request of the vice-president, the board of directors of the Mt. Vernon Railroad Company met at their office in Mt. Vernon—

Present, Z. Casey, B. L. Voorhees, I. T. Vandozen, I. D. Goetchius, and A. M. Grant.

On motion of B. L. Voorhees, it was ordered that the president
313 be instructed take one hundred of the bonds, and deliver them to Dr. N. A. Smith or Ira Hersey, in New York, and that said Smith and Hersey are hereby instructed to sell or hipothecate them for cash for the best price that they can get.

On motion of B. L. Voorhees, it was ordered that the sec't. sign bonds and place in the hands of the creditors of Vandozer, Smith and Co. to double the amount of their indebtedness; and it was further ordered that the remainder of six hundred bonds be placed in the hands of A. M. Grant.

Isaac D. Goetchus tendered his resignation as a member of the board of directors, which, on motion, was accepted.

On motion, the board adjourned.

A. M. GRANT, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MONDAY, *November 7th*, 1859.

The board met—present, Z. Casey, pres't; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, the board adjourned, to meet on Wednesday, the 9th, at 7 o'clock p. m.

A. M. GRANT, *Sec't.*

314 WEDNESDAY, *Nov.* 9—7 *o'clock p. m.*

The board met—present, Z. Casey, pres.; B. L. Voorhees, I. T. Vandozer, and A. M. Grant; and, on motion, adjourned to Thursday, 10th, 7 o'clock p. m.

A. M. GRANT, *Sec't.*

THURSDAY, 10*th November*, 1859—7 *o'clock p. m.*

The board met—present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, adjourned to Friday, the 11th Nov., 1859, at 7 o'clock.

A. M. GRANT, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

FRIDAY, *Nov.* 11, 1859—7 *o'clock.*

The board met—present, Z. Casey, pres't; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, adjourned, to meet on Monday, the 14th Nov., at 8 o'clock a. m.

A. M. GRANT, *Sec't.*

MONDAY, *the* 14*th Nov.*, 1859.

At 8 o'clock board met, persuant to adjournment—present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and,
315 on motion, the board adjourned to Tuesday, the 15th.

A. M. GRANT, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON, *Nov.* 15*th*, 1859.

The board met persuant to adjournment—present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant, and N. A. Smith.

Dr. N. A. Smith presented the following report from Ira Hersey:

OFFICE MT. VERNON RAILROAD COMPANY,
New York, Nov. 8, 1859.

This certifies that the following name' persons held certificate of stock for shares set against their respective names, as per receipts in margin of certificate book, and which are registered in stock ledger of this company, as follows:

Vandoser, Smith & Co., Mt. Vernon, Ill's	2,000	shares.
S. B. Kendrick, Logansport, Ind	1,000	"
L. D. Crippen, Coldwater, Mich	1,000	"
I. T. Vandoser, Mt. Vernon, Ill's	2,000	"
316 N. A. Smith, Troy, N. Y	2,000	"
Ira Hersey, New York	2,000	"
Shares	10,000	"

IRA HERESEY,
Transfer Office, 16 *Wall st., N. Y.*

STATE OF NEW YORK,
City and County of New York, ss:

Ira Hersey, being duly sworn, says that the foregoing statement, by him made and subscribed, is just and true, as appears by the books of the Mt. Vernon Railroad Company, in deponent's possession.

IRA HERSEY.

Subscribed and sworn to before me the 8th day of November, A. D. 1859.

In witness whereof I have hereunto set my hand and official notarial seal at the city of New York.

SYLVESTER LAY,
Notary Public, 16 Wall st., N. Y.

317 On motion, it was agreed that Mr. B. L. Voorhees should vote the 2,000 shares reported in the name Vandoser, Smith & Co.

The stockholders then proceeded to the election of directors by ballot, which resulted in the election of the following named persons: Z. Casey, A. Myers, N. A. Smith, L. D. Crippen, S. B. Kendrick, A. M. Grant, I. T. Vandoser, Ira Hersey, and S. J. R. Wilson.

And, on motion, the members of the board proceeded to the election of officers, which resulted as follows:

For president of the board, Z. Casey.
" secretary " " A. M. Grant.
" treasurer " " N. A. Smith.
" transfer officer " " Ira Hersey.
" superintendent " " I. T. Vandoser.
" attorney " " T. T. Davis.

The following resolution was offered and adopted:

Resolved, That the board of directors appoint or elect an executive committee of three, of which the president of the board shall be chosen one, who shall have the authority, under the general direction of the board, to perform all the acts which t'e board itself may do, and
318 whose acts shall be binding on the board. The executive committee shall keep minutes of their proceedings, to be entered in the board, and to be kept by the sec't'y of the board, if present; if not present, the minutes shall be signed by the committee, and be entered by the secretary. They shall act in all matters of finance, and the acts of a majority shall be valid. And there shall also be an auditing committee of three, to examine all claims against the company, particularly all expense accounts of the directory, to be approved of by the committee before allowed; and, on motion, Z. Casey, A. Myers, and L. D. Crippin were appointed the executive committee; and S. J. R. Wilson, S. B. Kendrick, and A. M. Grant were appointed as auditing committee.

On motion, the following resolution was adopted:

Resolved, That the Mount Vernon Railroad Company assume the debts of Vandoser, Smith & Co. contracted for the purpose of building
319 and carrying on the work of said road, and the treasurer and auditing committee shall ascertain and settle said indebtedness, and give notes of said company for the same.

On motion the following resolution was adopted:

Resolved, that the board of directors confer with the county court of Wayne County, as to the placing and keeping of the 300 construction bonds of the Mount Vernon Railroad Co., now in the hands of Ira Hersey, and that the same be placed for safekeeping with such person or

persons as may be agreed upon by the county court of Wayne County and the board of directors of the M't Vernon Railroad Company.

On motion, the board adjourned to 7 o'clock, p. m.

A. M. GRANT, *Sect'y.*

Meeting of board of directors of M't Vernon R. R. Co.

MOUNT VERNON RAILROAD OFFICE,
November 15th, 1859—*7 o'clock, p. m.*

The board met, pursuant to adjournment—present, Z. Casey, S. J. R. Wilson, I. T. Vandoser, L. D. Crippin, S. B. Kendrick, N. A.
320 Smith, and A. M. Grant.

Mr. L. J. Germain tendered, through the president, his resignation as chief engineer of the Mount Vernon Railroad, to take effect October 1st, 1859, which was accepted.

There being several applicants for the office of chief engineer, the board proceeded to ballot for some one to fill that office, which resulted in the election of J. Hill, jr.

On motion, the board adjourned.

A. M. GRANT, *Sect.*

Meeting of board of directors of M't Vernon R. R. Co.

M'T VERNON RAILROAD OFFICE,
May 11, 1860.

At the request of I. T. Vandoser, the board was called together by the president—

Present, Z. Casey, S. J. R. Wilson, I. T. Vandoser, A. M. Grant, and Ira Hersey, (by proxy,) Mr. Vandoser.

I. T. Vandoser, reported the resignation of N. A. Smith, as treasurer of the co., and also as a director, which was accepted; and, on motion, Cha's W. Lewis appointed treasurer of the Mount Vernon Rail-
321 road Co., to fill the vacancy of N. A. Smith. And, on motion, Mr. W. Jammerson was elected a director to fill the vacancy of Dr. N. A. Smith.

It was ordered by the board that Mr. W. Jammerson should call on Mr. Lewis for bond as treasurer.

On motion, Mr. W. Jammerson was authorized to call on Mr. Hersey and Smith for bonds to get 750 tons railroad iron for the Mount Vernon and Ashley Railroad.

On motion, the meeting adjourned.

A. M. GRANT, *Sect.*

Certificate of Angus M. Grant.

I, Angus M. Grant, secretary of the M't Vernon Railroad Company, certify that the within and foregoing is a true and complete copy of the proceedings of the M't Vernon Railroad Company, as appears to me of record from the book of record of said company in my possession.

ANGUS M. GRANT,
Sect'y M't Vernon Railroad Company.

M'T VERNON, ILLINOIS, *Sept. 7th, A. D.* 1869.

322 *Contract to deposit bonds with Hersey.*

Whereas the county court of the county of Wayne, in the State of

Illinois, by virtue of the laws of the State of Illinois, and of the proceedings thereunder had and taken, hath executed in due form, acknowledged and duly delivered, its certain deed of trust and indenture of mortgage to Isaac Seymour, esq., of the city of New York, trustee, each bearing date the twentieth day of April, 1859, whereby the said county court did grant and convey to the said Isaac Seymour, such trustee, one hundred thousand acres of land or thereabouts, lying and being in the said county of Wayne, and particularly described in said deed of trust and mortgage:

And whereas the object and purpose of the said deed of trust and mortgage were to aid in the construction and maintainance of the railroad of the Mount Vernon Railroad Company, and to secure the payment of the construction bonds issued by the said company, the railroad of which said company is designed to be constructed from Ashley, in the county of Washington, in said State, through the county of Jefferson and Wayne, in said State, and to the eastern boundary of said county of Wayne:

322½ And whereas the said Mount Vernon Railroad Company, has issued its four hundred construction bonds of five hundred dollars each, and its six hundred construction bonds of one thousand dollars each, for the purpose aforesaid, and it is designed and intended that one half of said bonds shall be appropriated and set apart for the sole and exclusive purpose of aiding in the construction of and maintainance of so much of the railroad of the said The Mount Vernon Railroad Company, as is or shall be located or situated in the county of Wayne:

Now, therefore, this agreement, made this twenty-seventh day of April, one thousand eight hundred and fifty-nine, between the Hon. S. J. R. Wilson and Thomas M. Scott, judges of the county court of the county of Wayne, State of Illinois, parties of the first part, The Mount Vernon Railroad Company, party of the second part, and Ira Hersey, party of the third part, witnesseth: That the parties of the second part, for

323 and in consideration of the premises and of one dollar to them in hand paid by the said parties of the first and second parts hereto, the receipt whereof is acknowledged, have issued and delivered to the party of the third part, in trust, two hundred of the said construction bonds or obligations of five hundred dollars each, and three hundred of the said bonds or obligations of one thousand dollars each, to be held by him, subject to the terms, stipulations, and conditions of the said deed of trust, and of said mortgage, for the sole and exclusive purpose of appropriating and expending the same or the avails thereof to the construction and maintainance of so much of the railroad of the said The Mount Vernon Railroad Company, as shall be located or situated within the said county of Wayne, and not otherwise.

And the said parties of the first part do hereby respectively assent and concur in and to the said transfer and delivery of the said construction bonds as herein provided for the purposes aforesaid, and they covenant that such application and appropriation of the same shall be to the

323½ amount and extent thereof in all respects an effectual fulfilment of the several purposes and trusts for and upon which the said lands and premises were conveyed and mortgaged.

And the said party of the third part doth hereby covenant and agree that he will receive, hold, and appropriate said two hundred of the said construction bonds of five hundred dollars each, and said three hundred of said construction bonds of one thousand dollars each, for and upon the sole and exclusive trust and purpose that the same or the avails

thereof shall be only expended, sold, assigned, transferred, or delivered, for the construction, maintainance, and benefit of so much of the railroad of the said The Mount Vernon Railroad Company as is now or shall be hereafter situated or located in the county of Wayne aforesaid, and in no other place, and for no other or different object or purpose.

In witness whereof said parties have hereunto respectively set their hands and seals on the day and year above written.

The said The Mount Vernon Railroad Company having hereto affixed its corporate seal and caused the same to be attested by its president and treasurer.

S. J. B. WILSON, *Co. Judge.* [ ]
THO'S M SCOTT, *Associate.* [ ]
By S. J. R. WILSON, *Att'y.*
324 Z. CASEY, *Pres. M't V. R. R.*
N. A. SMITH, *Treasurer* " " "
[L. S.] IRA HERSEY. [S.]

325 *President Casey's order to deliver bonds.*

NEW YORK, *June 15th*, 1859.

To N. A. SMITH,
Treas. of the Mt. Vernon R. R. Co.:

Please deliver to Ira Hersey, esq., three hundred of the one thousand dollar bonds of the Mt. Vernon R. R. Co's issue, as per contract entered into by and between the County of Wayne & the said R. R. Co., they being a portion of the four hundred thousand dollars to be had in trust by the said Hersey for said County of Wayne, as specified in said agreement. Also, please deliver to the said Ira Hersey, esq., two hundred of the five hundred dollar bonds as soon as the same are received by you, signed & sealed as *for* contract above, making in the aggregate four hundred thousand dollars, the said Hersey receipting to the co. for the same.

Z. CASEY,
Pres. of Mt. V. R. R. Co.

326 *Hersey's receipt for bonds.*

Received, New York, June 20th, 1859, from Dr. N. A. Smith, treasurer of the Mount Vernon Railroad Company, three hundred bonds (300) of one thousand dollars each, numbered from 300 to 600, inclusive, which bonds I hold in trust for said company, and for the County of Wayne, Illinois, as per agreement made with the said company, and Judges Million & Scott on the part of said county.

IRA HERSEY.

327 At a regular term of the county court of the county of Wayne and State of Illinois, began and held at the court-house in Fairfield, on Tuesday, the 14th day of December, A. D. 1859—

Present, Hon. S. J. R. Wilson, judge; Tho's M. Scott, associate; W'm Irwin, associate; J. W. Barnhill, cl'k; H. A. Organ, sh'ff, by R. S. Barnhill, dep'ty—

The following order was passed by said court, to wit:

Order of Wayne Co. court.

Whereas an order has passed by the board of directors of the "Mount

Vernon and Fairfield Railroad Company," asking the county court of Wayne County to withdraw the four hundred thousand-dollar bonds of the Mount Vernon Railroad Company, now in the hands of Ira Hearsy, of city of New York, and place the same in hands of the county court of Wayne County, or in the hands of any person that the said railroad company and the Wayne County court may agree upon:

It is therefore ordered by the court here that the said above-
328 named bonds be withdrawn from the hands of the said Ira Hearsy, and held by the county court of Wayne County until such person shall be agreed upon by said company and the county court as aforesaid.

STATE OF ILLINOIS,
Wayne County, ss:

I, Oliver Holmes, clerk of the county court of Wayne County, Illinois, do hereby certify that the foregoing is a true and correct copy of an order passed by the county court of said county, on the 14th day of December, A. D. 1869. All of which as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court, at Fairfield, this 21st day August, A. D. 1869.

[L. S.] OLIVER HOLMES, *Co. Clk.*

[5-ct. int. rev. stamp]

329 *Wilson's rec'pt for bonds.*

THE MOUNT VERNON RAILROAD CO.,
TREASURER'S OFFICE, NO. 2 NASSAU ST.,
New York, June 18th, 1860.

Received from Cha's W. Lewis, treasurer of the Mount Vernon Railroad Company, three hundred bonds of one thousand dollars each, & two hundred bonds of five hundred dollars each. Same bonds as rec'd from Mr. Seymour on the joint order of Mr. I. Hersey & myself.

S. J. R. WILSON.

330 *C. W. Lewis' receipt for bonds.*

Copy of receipt.

NEW YORK, *June*, 1860.

Received from S. J. R. Wilson, three hundred bonds of Mt. Vernon Railroad Company, of $1,000, and 200 bonds of $500; total, 500 bonds; am't $400,000 00. Proceeds of said bonds to be applied to the building of a railroad through Wayne County, and incidental expenses & advances already made & required.

CHA'S W. LEWIS.

331 *Letter of Wilson to Lewis.*

FAIRFIELD, , 1860.

Mr. CHA'S W. LEWIS.

DEAR SIR: So as to forward as much as possible the obtain'g of money to procure the St. Louis & Louisville charter & build the railroad, you will furnish to Mr. Davis sufficient bonds on which to obtain loans to pay current expenses & incidental. Also, furnish Mr. Hersey

with those required to prevent impediment on his part in your operations, you to retain sufficient to cover your advances & expenses.

Yours, truly, &*co.*

S. J. R. WILSON.

332 NEW YORK, *May*, 1861.

JNO. N. WHITNEY, Esq.

DEAR SIR: I annex a list of the recognized bonds of the Mount Vernon Railroad Co.

Very respectfully,

CHA'S W. LEWIS,
Treas. M't Vernon R. R. Co.

List of recognized bonds.

5.	Five of	$1,000.	Nos. 317, 328, 329, 330, & 331.
25.	Twenty-five of	"	Nos. 526 to 550, inclusive.
6.	Six	" "	No. 1 to 5, and 64.
50.	Fifty	" "	551 to 600.
20.	Twenty	" $500.	Nos. 119, 126, 223, 233, 335, & 236, to 247, 218, 253, 256, 258.
50.	Fifty	" $500.	" 299, to 346, inclusive.
2.	Two	" "	" 349–350.
2.	Two	" "	" 115, 116.
8.	Eight	" "	" 121 to 125; 127 to 129.
1.	One	" "	
1.	One	" "	

86 of $1,000.
84 " $500."

$819 74. NEW YORK, *Sept. 22d*, 1860.

At four months after date, the Mount Vernon Railway Company promise to pay to themselves or order, eight hundred & nineteen
333 $\frac{74}{100}$ dollars, for value received, with interest at the rate of seven per cent. per annum, having deposited with the holders hereof as collateral security, with authority to sell the same at the broker's board, or at public or private sale, or otherwise, at his option, on the non-performance of this promise, and without notice, eight of the first land grant bonds of said company, numbered 121, 122, 123, 124, 125, 127, 128, 129, respectively, and each for the sum of five hundred dollars.

MOUNT VERNON RAILROAD COMPANY,
CHA'S W. LEWIS, *Treasurer.*

(Endorsed:) "Mount Vernon Railroad Company, Cha's W. Lewis, treasurer. Letter."

OFFICE OF THE MOUNT VERNON RAILROAD COMPANY,
No. 2, Nassau st., New York, May 1, 1861.

I hereby certify that the following bonds of the Mount Vernon R. R. Co. are genuine and properly issued, and Isaac W. Seymour, esq., trustee, is requested to locate the lands held by him as such trustee for that purpose, upon the surrender of said bonds: Eight bonds of $500
334 each, Nos. 121, 122, 123, 124, 125, 127, 128, 129; one bond of $500, No. 258.

CHA'S W. LEWIS,
Treasurer M't Vernon R. R. Co.

Indorsement of Wilson.

"I authorize you to locate the foregoing *bonds*.
"S. J. R. WILSON."

(Indorsed:) Filed & opened per stipulation on file, November 25th, 1869. J. A. Jones, cl'k.

335 In the circuit court of the United States for the southern district of the State of Illinois.

UNITED STATES OF AMERICA, *State of Illinois, ss:*

KENNICOTT ET AL.
vs.
SUPERVISORS OF WAYNE COUNTY ET AL. } Bill in chancery.

The depositions of Francis M. Sursa and Angus M. Grant, witness' produced and sworn and examined before John W. Baugh, a notary public in and for the county of Jefferson, and State of Illinois, duly appointed, commissioned, and sworn, pursuant to the stipulations hereto attached, to be used and read as evidence on the part of the complainants in a certain cause pending in the circuit court of the United States, within and for the southern district of Illinois, on the chancery side thereof, wherein Kennicott et al., are complainants, and the Supervisors of the County of Wayne et al., are defendants, taken at M't Vernon, Illinois, Feb. 4, 1870.

336 ANGUS M. GRANT, a witness of lawful age, being duly cautioned and sworn, testifies as follows:

Deposition of Angus M. Grant.

My name is Angus M. Grant; my age is 57 years; my residence is in M't Vernon, Illinois; I have lived here 33 years; my occupation is that of a farmer; I was secretary of the M't Vernon Railroad Company from the spring of 1859, and kept all the books of said company that were kept in M't Vernon, (except one which has been lost,) until this time; no one ever called on me officially for the books of said company; there has been no meeting of the board of directors of said company at M't Vernon since the year 1860.

Int'y 1. Please look upon the copy of a contract now shown you, and hereto attached, marked Exhibit "A," and state if it be a true copy of the original contract between the parties therein named, and if you were an active party in promoting the construction of the railroad therein named, and had opportunities of knowing the acts, doings, and progress made by the parties in their efforts to build said railroad?

337 Ans. I have seen the original contract and compared it with the copy hereto attached, and know said copy to be a true copy of said original. The original is not under my control individually, or as secretary of said company, nor do I know whose control it is in. I took an active part in the construction of said railroad, and had good opportunities of knowing the acts and progress of said parties in their efforts to build said railroad, and of their contracts.

Int. 2. Now look upon the paper now shown you, hereto attached, marked Exhibit "B," and state if it be a true copy of the original con-

tract between Van Duzer, Smith & Co., and the County Court of Wayne County, for building a railroad from M't Vernon through Fairfield, to the eastern boundary of Wayne County.

Ans. I have seen the original contract, and compared it with the attached paper, marked "B," and know it to be a true copy of said
338 original. But said orignal is not under my control; neither do I know under whose control it is.

Int. 3. Please state all you now recollect and know in reference to the various contracts made by Van Duzer, Smith & Co., the M't Vernon Railroad Company, and the County of Wayne, directly or through its agents, relative to and with a view to carrying into effect the objects of constructing and operating the said railroad or railroads, and all you now recollect or know in reference to the manner of accomplishing these objects. State all the details as far as you are able.

Ans. Besides the two contracts above refer'ed to, as Exhibits "A" and "B," Van Duzer, Smith & Co. sold and transferred the said two contracts to the M't Vernon Railroad Company, with a view and for the purpose of enabling them to build the said railroad or railroads. The M't Vernon Railroad Company issued 400 bonds of the denomination of $500 00 each, and 600 bonds of the denomination of $1,000 00
339 each, making a total of ($800,000 00,) eight hundred thousand dollars. To secure the said bonds, or the payment thereof with interest, the M't Vernon Railroad Company executed a deed of trust on its franchises and all its property to Isaac Seymour, as trustee. And for the same purpose, the county of Wayne executed a deed of trust, and also a mortgage upon the swamp and overflowed lands of the county to Isaac Seymour, as trustee aforesaid. The foregoing bonds, deeds of trust, and mortgage, each and all, bear date the 20th day of April, A. D. 1859. With a view to give said bonds negotiability the said M't Vernon Railroad Company procured from the clerks of the circuit courts of Jefferson and Wayne counties certificates that said real estate and property of the said railroad company were free and clear from all incumbrances. On or about the 27th day of April, A. D. 1859, the M't Vernon Railroad Company, the County of Wayne, and Ira Hersey,
340 entered into an agreement, wherein was recited the execution of the bonds, deeds of trust, and mortgage aforesaid, for the purpose of securing the payment of the said construction bonds, to raise funds to aid in the construction of the railroad or railroads from Ashley, in Washington County, through the county of Jefferson, and to the east boundary of Wayne County. It was further recited that (200) two hundred of the $500 00 construction bonds, and three hundred of the $1,000 00 construction bonds should be set apart to aid in the construction of so much of the railroad or railroads aforesaid as lies in Wayne County. And it was provided that said bonds, last above referred to, should be placed in the hands of Ira Hersey, as trustee, for that particular purpose. And the application and the appropriation of the same should be to that amount and extent an effectual fullfillment of the several purposes and trusts upon which the lands and premises were conveyed and mortgaged. I have seen and read the original con-
341 tract, last above referred to, but the same is not in my possession or control; neither do I know who does keep or control the same. In fulfillment of the last-named contract on the part of the M't Vernon Railroad Company, on or about the 15th of June, A. D. 1859, the president of the said company ordered the treasurer of said company to deliver to Ira Hersey two hundred of the $500 00 bonds, and three hundred of the $1,000 00 bonds, and said bonds were accordingly delivered to

Mr. Hersey. Afterward, sometime in the month of January, 1860, or about that time, S. J. R. Wilson, with the assent of the directors of the M't Vernon Railroad Company, changed the custody of the above-mentioned $400,000 in bonds from the possession of Ira Hersey to that of Isaac Seymour. During the month of January, 1860, while I and Judge Wilson were both in New York, and present as a part of the board of directors of the M't Vernon Railroad Company, a contract was
342 entered into between said company and Uria Jameson, David Newcomb, and James G. Elliott, for the purchase and delivery of four thousand and eight hundred tons of railroad bars, at fifty-eight dollars per ton, the first installment of which, of five hundred tons, was to be delivered on the 1st day of March, 1860. For the purpose of getting money to meet the installment of iron, on the 1st day of March, 1860, aforesaid, an arrangement was made with a Mr. Morris, owner of the Whitfield Bank, of Dalton, Georgia, for about $21,750 00, which he then gave to them, and for which he received construction bonds of the company, either on a loan of the money and hypothecation of the bonds or sale; and I do not recollect which at present. Judge Wilson was present, assenting all the time to this arrangement. The above contract for iron and the arrangement with Mr. Morris, were duly reported to the board, and was by said board approved. Mr. Charles W. Lewis was appointed treasurer of said company on or about the 11th day of
343 May, 1860. Sometime in the spring or early in the summer of 1860, the said bonds for $400,000 were taken from the custody of Isaac Seymour upon the order of Judge S. J. R. Wilson and Ira Hersey, and delivered to Mr. Charles W. Lewis by Judge Wilson, sometime in June, 1860. Judge S. J. R. Wilson afterwards directed Mr. Lewis to deliver to Mr. Davis sufficient bonds on which to obtain loans to pay current expenses and incidentals, and to build the railroad, and to furnish Mr. Hersey with bonds required to prevent any impediment on his part; and also directed him to retain sufficient bonds to cover his advances and expenses. The above-named $400,000 in bonds have been subject to the control of the said county of Wayne ever since they were issued, or until they were disposed of by said county.

Van Duzer, Smith & Co. employed Gustavus Wagoner as engineer on the line of said railroad, and he commenced the survey and location of the line in the fall or winter of 1858, and prosecuted the same
344 from Ashley into Wayne County, nearly if not quite to Fairfield. Sometime in the winter or spring of 1859, Mr. Wagoner was dismissed, and L. J. Germain was employed as engineer-in-chief. He resurveyed the line from Ashley through Mt. Vernon to Fairfield, and finished the same to the eastern boundary of Wayne County, and located the same to the Little Wabash River, seven miles east of Fairfield, leaving the location thence to the eastern boundary of Wayne County to be fixed by the board of directors, as they might determine whether they would proceed with the railroad to Grayville or Mt. Carmel.

There was a great deal of work done on said railroad or railroads, and a great many ties prepared and delivered along the line, a number of culverts made, and some bridges also. There was a profile of the line made by the engineer and kept in the engineer's office. There never was any instrument or evidence filed with me, as secretary of said company, nor did any knowledge ever come to me of the
345 transfer of the charter of the St. Louis & Louisville Railroad to the Mt. Vernon Railroad Company, or to Van Duzer, Smith & Co. by the procurement of Wayne County.

A. M. GRANT.

Subscribed and sworn to before me this 4th day of February, A. D. 1870.

J. W. BAUGH,
Notary Public.

346 *Engineer's report to Mt. Vernon R. R. Co.*

Engineer's report.

To the president and board of directors of the Mt. Vernon Railroad Company.

GENTLEMEN: On assuming the office of engineer of your works I have thought it not unfit that I make to you an exhibit of the condition of the affairs pertaining to the engineering department at the time of my assuming its direction.

Maj'r Waagner, my predecessor, having made the preliminary surveys and partial locations of the line of your works from Ashley, on the Illinois Central Railroad, via Douglass, Mt. Vernon, Vandozer, Middleton, Seymour, & Scott to Fairfield, distant about miles on the route proposed to be built upon, to the east line of Wayne County, as per contract with the county court of that county, my duties have been made less arduous in prosecuting the surveys and determining
347 upon the final definite location of your line.

The general line selected runs about one mile north of and nearly parallel with the line between townships 2 & 3, & south of base line via Douglass, 15½ miles, to Mt. Vernon, the county seat of Jefferson County; thence deflecting one mile south and seven east to Vandozer, at the head of More's Prairie, distant $22\frac{7}{10}$ miles from Ashley; thence due east on the ½-mile line 6 miles, to Middleton, distant 28½ miles from Ashley; thence bearing northeast by east via Seymour (Six-mile Prairie) & Scott, (Arrington Prairie,) crossing the Skillet Fork and Dry Fork, 16¾ miles, to Fairfield, distant 45¼ miles from Ashley; thence deflecting to the south of east via Wilson, & crossing the Little Wabash River, eleven miles, to the east line of Wayne County, distant 56¼ miles from Ashley. The location of line east of the Little Wabash (seven
348 miles east of Fairfield) will depend upon your determination to extend your road to Greyville or to Mt. Carmel on the Big Wabash River.

The route indicated above crosses the West, Middle, and East Little Muddy Creeks, the Skillet Fork of the Little Wabash, & the Dry Fork of the Skillet. These several streams will require bridges of from 80 to 150 feet, single spans. Only two, however, will require to be built with spans over 100 feet. As these several streams might be characterized as sluggish they do not present any formidable engineering obstacles. Good foundations can be obtained in every instance.

There are no considerable elevations to be overcome by gradients either way. The topographical characteristics of the district of country traversed are those of broad bottoms and "rolling swells," rising and declining with long and gentle slopes, the minute topography of
349 which an inspection of the accompanying profile will afford, to which your attention is invited.

The rates of grades, which my predecessor deemed it expedient to adopt, seem to me to have been well considered, as the maximium, $\frac{120}{10000}$, is only one-half the rate adopted on the Illinois Central between Centralia and Cairo; I have fixed that as one maximum rate. Hereafter, however, should it be thought advisable, a maximum of $\frac{80}{10000}$ can be worked to without departing from your second roadway and without an

excessive additional expense. At present the adoption of the higher rate obviates a considerable expenditure most desirable to save, and is in accordance with your instructions.

The plans for bridges, which have been adopted, and are recommended, are such as have been built upon, and are now in use on first-class roads in this State; such as on the Illinois Central Railroad,
350 the Galena & Chicago, and others. For details, see the office files.

The plans, adopted for culverts, cattle passes, cattle guards, and small drains are essentially the same as are upon the 1st division of the Galena & Chicago Union Railroad. These have been proved to be sufficient, durable, and cheap, every way answering the purpose designed. Your works have this advantage over them that the timber material (if possible) is of superior quality. Every attention and care will be given to the making the foundations permanently secure, where nature has not made them such.

The material to be removed from the "cuts" is generally composed of a porous loam, of a subsoil composed of fer'uginous, sandy clay, such as on exposure would form a rich soil; or in some few instances and of small extent a rotten shale or "bastard limestone" has been found
351 to occur in the bottoms of excavations—the first requiring nothing but the shovel for its removal; the second *yeal*ding easily to the plow, and the latter requiring no powder for its upheaval, and all affording excellent material for embankments. Much of the grading will be surface work. The castings from the side ditches, being sufficient and of that kind of material which has been found to make the best of roadway; not liable to wash and of easy drainage.

From the slightly undulating "lay" of the district of country traversed by your proposed work, excellent facil*l*ities are afforded for ample and complete drainage, the cuts being of short extent and having declining gradients. Less than the usual expense and annoyance may be anticipated in keeping them thoroughly drained. I have revised and established the grades in every instance with a view to this ob-
352 ject as well as to that of overcoming the elevations and depressions, and to a due regard to economy in construction. The first consideration has not always received that weight in plans of construction, which a due regard for an economical operation of railroad in my opinion seems to demand from the constructing engineer.

With regard to the quality and abundance of the timber to be used & used in the structure of your road, I cannot speak in too high terms. In all my experience as an engineer I have never before had the satisfaction to have such excellent material with which to build. With proper, ordinary they may last in full use throughout the period of 70 years alloted to man; I do not modify what I have above stated, only so far as the durability of the cross-ties are concerned. But as for size,
353 soundness and toughness of texture, these have not, to my knowledge, been anywhere surpassed, when properly laid and bedded. They will afford a most firm and solid support for the iron track and passing trains.

It may not be inappropriate that I give my professional views in regard to the position of the line of your road in the reticulation of similar public works wrought or being wrought for the accommodation and development of the trade and travel of the industrial field, which owns St. Louis and Chicago as its centralizing, middle marts *marts* and markets which dispense supplies to, and receive products from, a greater extent of unimpoverished producing country (by nature rich) than any other two inland American cities, if not any other two cities of the

world. While "westward still the course of empire takes it way,'
354 yet, as surely must its surplus products seek for a final disposal and consumption in the older and more populous quarters of the continents, however distant at present by the way of the east, eventually as will by the way of the west.

While our interior is surpassing rich in its native soil, in its forests, and mines, and quarries, the older and distant is richer in human muscle and accumulated wealth. Its operators and merchants will send their manufactures and imports to us, and their uneasy, crowded population, will send off their crowds to fill our coming and going trains. The time was, and that not long ago, when the sagacious engineer might estimate the proximate amount of traffic and travel which would naturally seek any proposed work of internal improvement. But that day is passed.

His works are not the only element which are to bring prosperity.
355 Other great helpers are in the field, and in the laboratory. Those mistic eggs—which were symbols on the monum'ts—are being incubated; and steam ploughs, and reapers, and planters, and other engines, emulate the locomotive in power and usefulness, come out full fledged, and work to change the wilderness into producing fields, whose accumulating products crowd his depots to repletion, and overtask his trains. I congratulate myself in that your committee had attempted this task, usually assigned to the engineer, before my assuming the position I hold, and that such estimate is not called for at my hands, for here, in what the simple or malignant call "Egypt," jeeringly, nature has given you every advantage, and more than those the land of the Pharo's and the pyramids ever possessed. But with a want of improvement which might beggar that of the older before the first Pharo' ever reigned, you have a climate as genial to vegetation, more salubri-
356 ous to health, such forests of timber as are not anywhere else excelled, mines of purest iron and cobalt, quarries of freestone, lime, cement, and beds of marl, continuous workable beds of bituminous coal, pure water, and an abundance of it. The various fruits ripen here with a lusciousness that the most favored of other sections of our land might envy. What shall be said of the state of your condition when your progressing improvements shall place you on the direct line of eastern and western travel and trade? The time will soon be (if you are suc'essful in the accomplishments of the designs which you have laid down) when no small modicum of the commerce of continents shall trundle by and over your lines, when your farmers, and merchants, and mechanics, shall be brought (in effect) as near to New Orleans, and St. Paul, and New York, as they are to Ashley to-day, when they
357 may avail themselves of the markets at the South and North, and of the East and West—your committee have attempted to tell. It appears to me that there is little apprehension of over-estimating the amount, provided you build wisely and well.

Below (A) I have tabulated the amount of expenditures on amount of construction, engineering, office, & for directors, within as exact amount as the data within my reach has enabled me to present.

Estimates of future operations are necessarily postponed to another time, to be laid before you at your call.

The proportionate amount of grading done is plainly exhibited in the colum'ed profile now before your committee, & which will be revised as the work progresses. All of which is respectfully submitted by yours, very truly.

L. J. GERMAIN,
Ch'f Eng'r M't V. R. R. Co.

M'T VERNON, *May 2nd*, 1859.

358 APPENDIX A.

Am't construction ac. to May 1st, 1859:

Grading ac	$	
Bridging & culverts ac	"	
Cross-ties "	"	
Lumber for structure	"	
Cleaving line	"	$
Chartering & traveling expe's	$	
Agencies "	"	
Office "	"	
Engineering "	"	"
Total expenditure		$

359 (Here follows map, marked page 359.)

360 FRANCIS M. SURSA, being produced, cautioned, and sworn according to law, testifies as follows, to wit:

Int. 1st. What is your name, age, and place of residence, and occupation?

Ans. My name is Francis M. Sursa; my age is 40 years; and my place of residence is M't Vernon, Illinois; and my occupation is that of laborer. I was employed during parts of the years 1858 and 1859, by Van Duzer, Smith & Co. and the M't Vernon Railroad Company in assisting the corps of engineers in surveying and locating the line of a railroad from Ashley, in Washington Co., through M't Vernon, in Jefferson County, and Fairfield, in Wayne County, to the eastern boundary of Wayne County, in the State of Illinois. Said line was located, as I understood it at the time, and I know that there was more or less work done on the
361 whole line of said railroad, by said Van Duzer, Smith & Co. and M't Vernon Railroad Company. There was a great deal of work done on said railroad. The grading was nearly *on* done from Ashley to M't Vernon, and some grading was done at Fairfield; the line was chopped out and the large timber grubbed nearly through the whole line, and the ties were prepared and drawn to the line nearly all the way from Ashley to some distance in Wayne County, and through the bottom of Skillet Fork Creek, and other ties through the timbered country nearly all the way to Fairfield.

F. M. SURSA.

Subscribed and sworn to this 4th day of February, A. D. 1870.

J. W. BAUGH,
Notary Public.

STATE OF ILLINOIS,
Jefferson County, ss:

I, John W. Baugh, a notary public in and for said county, do hereby certify that the above depositions were taken by me on this day at the
362 "supreme court house," in M't Vernon, in said county and State; that the complainants in the cause appeared, by Hon. W. B. Scates, their solicitor, and that no one appeared for the defendants; that said witnesses, Francis M. Sursa and Angus M. Grant, before any interrogatories were put to them, were each by me sworn to speak the truth and the whole truth in the case pending in the circuit court of the United States for the southern district of Illinois, wherein Kennicott et al. are compl'ts,

and the Supervisors of Wayne County et al. are def'ts; and that after said depositions were by me reduced to writing and read in their hearing, respectively, they each subscribed their name to their respective depositions, and said on their oath that the matters therein contained were true. And that said depositions were taken pursuant to the stipulations hereto attached.

In testimony whereof I have hereunto set my hand and notarial seal at M't Vernon, this 4th day of February, A. D. 1870.

[L. S.] J. W. BAUGH,
Notary Public.

[5-ct. int. rev. stamp, canceled.—J. W. B. 4—2 '70.]

363 (Indorsed:) Filed and opened at request of Messrs. McClernand & Broadwell, February 15, '70. J. A. Jones, cl'k.

364 *Deposition of Grant.*

The deposition of Angus M. Grant, taken at M't Vernon, in the county of Jefferson, and State of Illinois, on the third day of November, A. D. 1870, before John W. Baugh, a notary public in and for the county of Jefferson, and State of Illinois, at his office in M't Vernon aforesaid, in pursuance of a stipulation of the defendants' attorneys, the original of which is attached to the deposition of Richard L. Boggs, taken before James McCartney, a notary public for Wayne County, Illinois, on the second day of November, A. D. 1870, a copy of said stipulation being hereto attached. Said deposition to be read as evidence in the case now pending in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott et al. are complainants, and The Board of Supervisors of Wayne County are defendants.

365 *Deposition of Angus M. Grant.*

ANGUS M. GRANT, a witness of lawful age, being produced, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, as far as he may be interrogated by either of the parties, testifies as follows, to wit:

Interrogatory 1. What is your name, age, and place of residence?

Ans. Angus M. Grant is my name; my age is 58 years; and my residence is in M't Vernon, Illinois.

Int. 2. Are you acquainted with I. T. Van Duzer, N. A. Smith, B. L. Voorhees, John R. Satterfield, S. W. Carpenter, W. Adams, Joel Pace, Z. Casey, H. B. Newby, W. Duff Green, John C. Gray, H. T. Pace, A. M. Grant, W'm B. Anderson, S. T. Stratton, John R. Allen, John S. Bogan, E. P. Grant, James Westcott, Thompson Angler, Edward McAtee, John Waite, A. P. Elkins, Samuel Gibson, James B. Tolle, David Stewart, Thomas H. Hobbs, Richard S. Nelson, John S. Blake, J. N. Brookins, B. F. Brewer, and D. C. Warren; and how long have you known
366 them, and are you acquainted with the handwriting of them?

Ans. I am acquainted with them, and have known them from twelve to thirty years, and am acquainted with their handwriting.

Int. 3. Please look upon the contract now shown you and hereto attached, and marked Exhibit "No. 3," and state if the signatures thereto are the signatures of the parties purporting to have signed the same.

Ans. I am satisfied they are.

Int. 4. Are you acquainted with L. J. Germain; and if so, how long have you known him, and are you acquainted with his handwriting?

Ans. I am, and have known him since the year 1859, and know his handwriting.

Int. 5. Look upon the paper now shown you and hereto attached, and marked Exhibit "No. 13," and state if the signature thereto of
367 L. J. Germain is his genuine signature, and state the relations that subsisted between you at the time.

Ans. The signature is genuine. I was acting as a director of the M't Vernon Railroad Company, and also secretary of the board of directors of said company; and said L. J. Germain was chief engineer of said company, and, as such chief engineer, made said report, (Exhibit No. 13,) and filed the same with me as secretary aforesaid.

Int. No. 6. Look upon the paper now shown you and hereto attached, marked as Exhibit "No. 17," and state if you are acquainted with the parties thereto, and if the signatures thereto are the signatures of the parties. State all you know in relation to the same.

Ans. I know Van Duzer and Smith, and was introduced to Mr. Gulick at M't Vernon, Jefferson Co., Ill's. I don't know Hajor. The signatures of Van Duzer and Smith are genuine. Van Duzer and Gulick
368 told me that he, Gulick, and some other man had a contract for work on the M't Vernon Railroad, and Gulick did some work on the road. This was in the latter part of the year 1859, or first part of 1860, or about that time.

Int. No. 7. State, if you know, where Ira Hersey's residence was in the year 1859, and where it is now, and if he ever, to your knowledge, resided in the State of Illinois; and is his signature, as witness to the said Exhibit "No. 17," genuine. Do you know Mr. Hersey? If so, how long have you known him, and are you acquainted with his handwriting?

Ans. I know Mr. Hersey, and have known him since the year 1859. We were both members of the board of directors of the M't Vernon Railroad Company at the same time. I am acquainted with his handwriting, and his signature to said exhibit is in his handwriting. In 1859 his residence was in New York City, and, as far as I know,
369 he lives there yet. He never lived in the State of Illinois, to my knowledge.

Int. 8. Look upon the paper now shown you, marked "No. 14," as exhibit and hereto attached, and state if you ever knew Mr. Ezra Baldwin; and if so, state all you know in relation to his residence, in 1859 and now; whether you know his signature, and give your means of knowledge.

Ans. I never knew him nor his residence at any time, nor his signature. I have lived in the State of Illinois 34 years, and acted as deputy under two different United States marshall's, and have had a pretty general acquaintance in the State, and have never known any such man as the subscribing witness, Ezra Baldwin, living in the State of Illinois.

Int. 9. State if you know the parties to the contract, and if you are acquainted with their handwriting, and are the signatures thereto genuine?

370 Ans. I know all of the parties but John T. Harley. I am acquainted with the handwriting of all but said Harley. The signatures of Smith, Hersey, & Kendrick are genuine. That of L. D. Crippen and I. T. Van Duzer I believe to be in the handwriting of N. A. Smith.

Int. 10. Look upon the contract now shown you and marked Exhibit "No. 15," and hereto attached, and state if you are acquainted with the parties thereto, and how long have you known them, and are you acquainted with their handwriting? and if so, state if their signatures to said contract are in their handwriting.

Ans. I can't state that I know but two of said parties, to wit, U. Jameson and L. D. Crippin. I have known them over ten years and their handwriting, and their signatures to said contract are in their handwriting. The other parties to said contract I do not know
371 neither do I know their handwriting.

Int. 10. Are you acquainted with Thomas L. Davis, the subscribing witness to the above contract? If so, state if you are acquainted with his handwriting and his place of residence, and whether he now resides in the State of Illinois.

Ans. I know a Mr. Davis, who was in some way connected with the company and railroad matters; but do not know his Christian name, nor his handwriting. I think he lived, in 1860, in Buffalo, N. Y. I have no knowledge of him ever having lived in the State of Illinois.

Int. 11. Look upon the assignment hereto attached, and marked Exhibit "No. 5," and state if you know the parties thereto, and the subscribing witness to the same; and if so, how long have you known them, and if you are acquainted with their handwriting, respect-
372 ively; and if so, are the signatures thereto in their respective handwriting? State, also, where the subscribing witness, George G. Rockwood, now resides, and whether he now resides in the State of Illinois.

Ans. I know all the parties to said assignment. The subscribing witness I do not know, to the best of my knowledge; I have known the parties to said assignment from ten to 34 years, respectively; am acquainted with the handwriting of the parties, but not of the witness; the signatures of Voorhies, Casey, & Smith are in their own handwriting; that of Van Duzer is in the handwriting of B. L. Voorhies; I know nothing of the residence of George G. Rockwood; I never knew of him residing in Illinois.

Int. 12. Look upon the contract now shown you hereto attached, marked Exhibit "No. 7," and the orders now shown you and hereto attached, marked as Exhibits "8" and "12," and the receipts now
373 shown you and hereto attached, marked as Exhibits No's "9," "10," and "11," and state if you are acquainted with the parties thereto, and the makers thereof, respectively; if so, how long have you known them, respectively? State, also, if you are acquainted with their handwriting, respectively; and if so, state if their signatures thereto are genuine.

Ans. I am acquainted with the parties to and makers of said orders, and receipts, and contract, and have known them respectively from ten to 34 years; and am acquainted with their respective handwritings; and their signatures thereto are genuine.

Int. 13. Were you acquainted with Isaac Seymour, the trustee in the deed of trust from the Mt. Vernon Railroad Company, and the deed of trust and mortgage from Wayne County; if so, how long have
374 you known him, and where did he reside? State further if Mr. Seymour is still living, or if not, when did he die?

Ans. I was introduced to him in New York in January, 1860, and had several conversations with him there in a bank. He resided there in New York, and was cashier of the bank of North America. From

the best of my information, he is not living, and I think he has been dead some seven years; I saw his death announced in a newspaper.

Int. 14. Had you, as secretary of the M't Vernon Railroad Company, a plat of the line of the M't Vernon Railroad from Ashley to the eastern boundary of Wayne County, made by the engineers of said company? If so, please produce the same, and make it an exhibit in this case.

Ans. I here produce this plat or profile, marked Exhibit "A," (attached to this deposition,) which I found among the papers in the
375 office of the engineers of said company after the engineers left.

A. M. GRANT.

Subscribed and sworn to before me this 3rd day of November, A. D. 1870.

J. W. BAUGH, *N. P.*

376 *Affidavit of M. Hay.*

JNO. W. KENNICUTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE County et al.

In the circuit court of the United States for the southern district of Illinois.

MILTON HAY, of council for the complainants in the above-entitled cause, being duly sworn, deposes & says that the originals of these several deeds executed by the county court of Wayne County, Illinois: one executed to Charles Wood, and bearing date 13th of March, 1856, and conveying the lands described and set forth in the copy thereof, herewith exhibited, marked respectively 1, 2, 3, and the two others bearing date 29th of April, 1859, executed by said county court to Isaac Seymour, and conveying the lands described in the copies thereto herewith exhibited, are neither of them in the power or control of the parties complainant in this cause, nor of either of them, as he is advised and *and* believes.

And further he says not.

MILTON HAY.

Subscribed and sworn to before me this 8th day of Nov., 1870.,

J. A. JONES, *Clk.*

(Endorsed:) Filed November 8th, A. D. 1870. J. A. Jones, cl'k.

377 *Testimony.—Evidence of Walter B. Scates.*

WALTER B. SCATES, sworn:

I merely propose to stat' the search I have made for papers and documents, &c., of the Mount Vernon R. R. Co., including contracts, &c. All the original papers that belong to the transaction that I supposed would be in the custody of the company, or some of its officers, I have searched
378 for them, and when individuals had no offices, I went to the persons themselves. I saw Mr. Grant two or three times, who is the secretary, and got him to make search among all the papers that were left with him, for any original contract that might be in his possession. I found

Search for papers.

none. I also had him search once or *or* twice for a little book. I don't suppose it was bigger than this, (pointing to a thin octavo book on the table,) in which the original minutes of the Mount Vernon Railroad were entered, beginning 1855, some time in the spring, a part of which minutes were transcribed into a book, which the contractors kept after they came on and took the contract.

Transcript in Exhibit "A."

In 1858, a portion of these minutes were transcribed, and are now in the Exhibit "A," beginning with the election of the first board of directors. That portion of it has been transcribed into the book I found there, and I got these

Original book.

minutes there. But the original book in which the minutes were entered—minutes of the organization, &c., is

379 the one I was in search for particularly, and the one referred to in Grant's deposition, as having been given to the lawyers there, in some suit connected with the railroad.

Mr. GOODWIN: That was a small one?

Mr. SCATES: It was, yes; the same one referred to by Mr. Smith. I state this merely to describe the book. Mr.

What Grant said.

Grant said it was given to some of the lawyers bringing suit there. There was a suit brought to the supreme court, and the supreme court reversed it, contrary to their expectations. So I went to Judge Pollock, who acted as solicitor in bring-

Further inquiries.

ing that suit. I went to Thomas F. Casey, a director, who, I thought, was likely to know about it, and T. B. Tanner; to John S. Bogan, the clerk of the circuit court; to William Dodds, clerk of the county cour'; and to Joel Pace, trustee in this case. I went to all these in search of these papers. I inquired of Joel Watson, county clerk at that time, and to Harvey T. Pace, inquiring for this book; had the county records searched, the files searched, to see if

380 it had been there; directed the lawyers to look in their offices, and the directors also. And I have been unable to find the book among the whole of them. The last

Last trace of book.

trace I could get of the book was from Mr. Grant, who said said it had been lent to the lawyers. I went to New York, and called upon Charles W. Lewis, who was the last treas-

Papers in the case. How obtained from Mr. Lewis.

urer of the company, and asked him for the papers in the case, and any records he might have in the case; and his answer was that he had quit business in New York some years ago; went to New Orleans, and directed his books to be packed in a trunk, and sent to him in New Orleans; that they were so sent; and, after he left New Orleans and went back to New York, the trunk remained behind, and he did not know where the papers were, unless in that trunk; and he promised to write and ascertain, and that is the last I got from him.

Recapitulation.

That is the way we got on the trail of the papers; so much we have produced. And now, as to the reason we are so late: Going over all we had that had any pertinancy

381 to the case, I thought it best, and went to New Orleans, and examined, and consulted, and this is all that I have been able to find. Searched over New York and New Orleans, Wayne County, Mount Vernon, where I supposed the papers might be, and of what we have found any

thing (if we think pertinent) that we have not yet introduced, we will do so now.

I am through for the present.

The COURT. Gentlemen, cross-examine him on those points, if you wish to do it.

Cross-examination:

Cross-ex.

Mr. FREEMAN. If I understood you correctly, Judge Scates, the minutes you have exhibited here do not purport to be copies from the original book, but from the book into which, I suppose, the original was transcribed—a copy of a copy?

Original minutes.

Mr. SCATES. It is the original book. Vanduser, Smith & Co. took the contract, and became the railroad incor-
382 porators. This book we got these from, is the book they kept; having one or two papers of the original minutes transcribed into it.

The COURT. Did you speak of another original book?

Mr. SCATES. Two original books: this beginning 1858, the other—

The COURT. This book has transcriptions; but the original of this book?

Copy of a copy.

Mr. SCATES. The transactions of '55. This from a copy copied from the original minutes.

Mr. FREEMAN. Not as originally made?

Mr. SCATES. Don't know whether in that original book or not; I suppose they are; I suppose that portion of it may be in the other book; I suppose it is; it ought to be; but when the board of director's contractors became a corporation, they transcribed them into this, so as to complete the organization on the book.

Mr. FREEMAN. All I want to get at clearly is that the book in which these copies were taken was not the original book of record, but was a transcript, as you suppose, from the original.

383 Mr. SCATES. They are from the book, or from the original minutes; that might have been; and preserved up to that time. Don't know which, but I presume that it is lost. It ought to be there. Both original books though.

Mr. FREEMAN. As to who made that in which that transcript was, you do not know?

Mr. SCATES. Who transcribed it we do not know.

Mr. FREEMAN. We make a point there; this is a copy of a copy.

The COURT. What is the object of this testimony; to show the contents of the original book?

Contents of original book.

Mr. SCATES. Upon that we offer Mr. Pace's testimony, and Dr. Smith's testimony, and the recitals of these deeds that we have offered for that purpose. They, I think, cannot be gainsaid.

The COURT. You want to produce the copies and the original book?

Mr. SCATES. The original transactions we suppose are in that book.

How to prove proposed.

Mr. FREEMAN. But the book from which these are
384 taken is in existence, and can be obtained. This is copied from that second transcript.

The COURT. Do you want to introduce anything on that ground?

Mr. SCATES. That is all.

The COURT. Part of that was transcribed into this original by Grant? He speaks of it as being transcribed.

Mr. BEECHER. Didn't make the copy from the old book.

Mr. FREEMAN. Copy of a copy.

Mr. BEECHER. He finds a book among other papers, and from that he copies this; but that Judge Scates produces here. It is a copy——

Mr. STUART. You don't want to show any more than to lay a foundation for Pace's testimony?

Mr. SCATES. I want to show facts. I don't know whether they are in that book or not; they ought to be there; I suppose they are in that book, but I want to show the original transaction. Pace's testimony and Smith's testimony—I read them both yesterday. I want to lay the foundation now by the search. I think, may be, this
385 is the one. Gentlemen, I show you so much of this exhibit as pertains to the original minutes of '55. It is contained on the first and second and third and fourth pages of this exhibit. It is what I suppose might have been transcribed in the book that is lost. It is so much as relates to the commissioners' action in collecting subscriptions to the stock.

Charley Pace.

Mr. BEECHER. It is signed by Charley Pace, as secretary?

Mr. SCATES. I am under the impression Charley might have been called in. I wrote to Mr. Baugh to get his recollection if he had any minutes. It had all passed out of his memory.

The COURT. Is he living yet?

Mr. SCATES. Yes, sir; he is alive.

Mr. FREEMAN. Allow me—you don't know whether that is a copy from the records or not?

Mr. SCATES. I do not. I know it has been the supposition that the minutes ought to have been kept in that book. This is on the book of direction. They kept a book
386 after Vanduser, Smith and Company came in.

New York record book.

Mr. FREEMAN. This a copy from that book?

Mr. SCATES. Yes; in that book we find so much as contains the organization of the original company of '55. This begins the action of the new board, Vanduzer, Smith & Co., and all that is on the book is in this exhibit; some that is impertinent to this case too.

Mr. FREEMAN. Whose handwriting? Not in the handwriting of the secretary?

Mr. SCATES. I don't know; don't know in whose handwriting. Baugh was the original secretary. I didn't see the original minutes.

Mr. MCCLERNARD. Let me ask you one question: Are those taken from the original minutes of the company?

Mr. SCATES. They are from the original books kept by the Mount Vernon Road after Vanduser, Smith & Co. came in.

Mr. MCCLERNARD. Taken from the original book of the Mount Vernon Company?

Mr. SCATES. I can't say that this ever was the original book in which the original minutes of '55 and '56
387 were transcribed. I know it was the intention to keep a book, and Grant says there was a book. I suppose that is all I know.

Mr. GOODWIN. Grant swears they kept them in that book.

Mr. MCCLERNARD. Were those minutes taken from a book in the hands of Mr. Grant, the book being that of the Mount Vernon Railroad?

Mr. SCATES. Yes, sir; it is the original one.

Mr. FREEMAN. That book is in existence, accessible to you?

Mr. SCATES. I had access to see it.

Mr. STUART. I understand you to say that you don't know anything, of your own knowledge, about that original book, more than what Grant says, that he transcribed it? Grant's testimony.

Mr. SCATES. Not able to say that I ever said it.

Mr. STUART. He known nothing personally then?

Mr. MCCLERNARD. You found one book an original book?

Mr. SCATES. Yes.

Mr. FREEMAN. What I want to get at is, isn't that in existence? If so, it can be brought here.

Mr. SCATES. Mr. Grant has this book to-day, I suppose.

388 The COURT. The point is, whether you should produce that or sworn minutes. That is the point whether sworn minutes is evidence? That I won't undertake to say now.

Mr. SCATES. I say again, it was either transcribed from a previous book, in which the minutes were entered, or they are upon the book itself. I never saw that original book; couldn't find it.

Mr. STUART. That transcript of record, in the book now kept by the company, in whose hand was that transcript made? Handwriting of New York (record) transcript.

Mr. SCATES. Can't tell you, sir.

Mr. STUART. In Grant's?

Mr. SCATES. I think I asked Mr. Grant, and I don't think he knew.

Mr. STUART. It wasn't in the handwriting of this secretary?

Mr. SCATES. Can't say.

Mr. STUART. Beecher and you examined that book?

Mr. SCATES. We saw it, and probably tried to pass some opinion. Goches was the first secretary; Grant was his successor. Don't think Mr. Grant knew.

389 Mr. MCCLERNARD. Baugh was the predecessor of Mr. Goches?

Mr. SCATES. Think Baugh left the county before Vanduser, Smith & Co. come to contract. That is my recollection. Re-direct.

New York record offered.

We now offer, gentlemen, the original book of this board of directors of the Mount Vernon Railroad Company, under these parties, Vanduzer, Smith & Co., so far as the board of government was kept in New York. The one I got that from was kept at Mount Vernon. This is when they made a secretary pro tem., and kept a minute of their corporate doings, there in New York.

Objected to.

Mr. STUART. Save an objection to that.

Mr. SCATES. Only one or two entries of that which I want to read.

George G. Rockwell, sec. pro t.

I wish to state another fact I wanted to prove by Mr. Grant, and I am not able to say positively; George G. Rockwell subscribed first to one of these contracts. Mr. Grant didn't know, or know his residence. I was informed that he lived in New York. I find, looking over the minutes, that he was one of the board of directors, and when the meeting was held in New York he was appointed
390 secretary pro tem. To the best of my information, George G. Rockwell is a resident of New York. I don't know his handwrite, but I saw he subscribed to these minutes as secretary pro tem. If a comparison is allowed——

Mr. KNAPP. Who identifies the book, Judge Scates?

Book. How obtained.

Mr. SCATES. I only state this; that it is the book I got with the original papers I found in New Orleans. The face of it gives identity enough to it—the contents of it. I was informed by the former treasurer, Lewis, that the books and papers were in New Orleans. He packed them up and sent them to New Orleans. I got on the trail of the papers that belonged to the case, and that was among them. As to any questions about them, I will ask to have Mr. Hodges sworn.

Mr. KNAPP. Where did you get it?

From Mr. Hodges.

Mr. SCATES. Got it from Mr. Hodges.

Mr. KNAPP. Did'nt know that a book of that sort would prove itself.

Mr. STUART. We object to that, because it is evi-
391 dently all in one handwriting, signed in one way. They profess to have signed that.

Mr. GOODWIN. Probably a list of directors.

The COURT. Perhaps he is giving the names as names of those persons.

Mr. SCATES. So many persons, of course. It is the secretary. Grant signs that as secretary. There is Gra——

Grant's signature.

Mr. MCCLERNARD. Judge Scates, a question: Do you know Mr. Grant's signature? Is it there?

Mr. SCATES. Yes, here is one; he signed as secretary. When he was in N. York he acted as secretary. Here is one—there is another. Mr. Grant served here—he was then in New York.

Mr. MCCLERNARD. Was he in New York at that time?

MR. SCATES. Yes; so he says.

Afternoon session day, 2 o' c.

392 AFTERNOON, 2 *o'clock.*

WALTER B. SCATES re-examined:

Mr. Scates. Re-exam.

Mr. MCCLERNARD. One question I wish to ask you, Judge Scates: Did you ever have anything to do with the Mount Vernon Railroad Company?

A. Yes; I helped organize it. I was elected one of the board of directors in the spring of '54.

Q. You presided in '55?

A. Yes.

Q. Do you know, sir, whether any connection or consolidation of the Mount Carmel and Mount Vernon Railroads was effected; and if so when? Consolidation M't C. & M't V. Roads.

Mr. KNAPP. That question is objected to. Objection.

The COURT. Any arrangement between them?

Mr. KNAPP. Any arrangement for running trains? Yes.

Mr. STUART. We wish to preserve our objection.

Mr. SCATES. I would state that there was a meeting of the two companies at Mount Vernon—of the Mount Vernon and Fairfield Companies. I recollect very distinctly
393 that Henry Goedeking there, and Harvey T. Pace, directors in that Belleville Road. They were incorporated as the first directors. They went with the Mount Vernon Railroad Company. The meeting was held over Joel Pace's store. The object was to form a connection under the Mount Vernon charter. I drafted whatever was drafted for the joint boards. They were adopted, and if I knewhow to draw what was wanted, I drew such as would form a connection, according to my idea of the Mount Vernon charter. I didn't read it. It was merely to form an intersectional connection, and that was the object of this meeting, and that was what was done, if I knew how to draft what was necessary. His recollection of the meeting.

Mr. MCCLERNARD. The connection was one of that character?

A. My impression has always been that it was in 1855, before the vote in Wayne County. I have always been under the impression that it was preparatory to the vote
394 taken in reference to the donation of swamp lands. Date of meeting in '55, before the vote in Wayne Co.

I would state farther that a meeting of the same two companies and of the Mount Carmel Railroad took place in the year '56, at Mount Vernon, with a view to a further consolidation, and with a view of Pickering's interest. I was present at that meeting and assisted. The object then was to form a further connection, getting Pickering's road in. That extended the road through. A connection was then formed. The difficulty in the arrangement was to satisfy Pickering's private interest in the property of that company. Second meeting in 1856. Pickering's interest.

Mr. MCCLERNARD. That was the last meeting?

A. Yes; that was held in '56. I speak from the best of my memory and impressions, while I find others differing with me about the joining. The meeting in '56 was held in the same place.

Mr. BEECHER. The first meeting was held in '55, I believe?

A. It was in the spring, I think. I know it was
395 about then. I am under that impression.

Mr. KNAPP. Judge Scates, who was present at this meeting? Cross-ex.

A. I recollect Mr. Goedeking being there. I was there myself.

Mr. BEECHER. Excuse me a moment; a list of '55 is here.

A. Harvey T. Pace was there. They were not all there. I recollect Mr. Goedeking. (Some further names were mentioned to which the witness responded "I don't recollect.") I think John M. Johnson was there. M. Casey was there. I have been under the impression that Mr. Bonham and Mr. Turney were there, although I am not sure. Mr. Coffin, also. As to Mr. Goedeking being there, Mr. Turney recollects that.

Mr. BEECHER. These parties you speak of as present were of the Mount Vernon Railroad Company?

A. Some of them.

Redirect. A quorum present.

Mr. HAY. I would call your attention to one thing. Was it your recollection that there was understood to be a quorum present of the Fairfield and Belleville Company?

A. I am under that impression; probably a representation of the full company. I knew I was acting rather in the way of legal adviser as well as a member of the Mount Vernon Company at the time. I wanted to do the thing properly so as to comply with the Mount Vernon R. R. law, and I am further convinced of the general impression being correct by the fact that I afterwards went over into Wayne County, at Fairfield, and made a speech to induce the people of Wayne Co. to vote the lands. I don't know but you, (to Mr. Beecher,) were present.

Witness made a speech in Wayne Co.

Mr. BEECHER. I recollect.

A. I think Governor Casey went over, and made a speech at the same time. We had a canvass. I know I made a speech before the election in your county, in favor of their donating the lands.

Mr. MCCLERNARD. That's all.

397 Cross-examined:

Record of meeting of '55.

Mr. KNAPP. Was the record of that meeting kept, Judge Scates?

A. I suppose so, and I supposed it was in the lost book; but I can't say I ever saw that book.

Bellville & Fairfield R. R. charter.

Q. Did you ever have any knowledge of what was done by the Belleville & Fairfield R. R. Company?

A. I don't think they ever did anything.

Q. Did they ever organize?

Nothing done under it.

A. I don't think they ever effected any further organization than the organization by the charter this meeting was under.

Q. Was anything ever done under that act that you know of?

A. I don't know; I am not aware of anything.

Q. Never took any stock in, that you know of?

A. I think not; I am under that impression.

Mr. MCCLERNARD. You don't know anything about it?

A. I don't; wasn't a member of that company. I was interested to make use of the charter to get through Wayne County.

398 Mr. KNAPP. Don't you know long afterward—'58, —'9—'60—of any effort to go through Wayne County?

A. I can only answer that in this way. In '57 I settled in Chicago to practice law, and when I found Vanduzer,

Smith & Co. ready to take the contract, I went down there and was their draughtsman. Mr. Tanner was their counsel and the agent of the county, and the meeting was held at Joel Pace's. Mr. Tanner was employed to see that a proper contract was entered upon. I was there, and drew the contract as amanuensis. That was October, '58, and I don't know but a part of this original paper we have here is in my handwriting. Contract. Vanduser, Smith & Co. with R. R.

Mr. GOODWIN. The contract?

A. With Smith, Vanduser & Co. I was very seldom at Mount Vernon afterwards. I don't know what they understood.

Mr. GOODWIN. Did that include the contract with Wayne County?

399 A. No. It was afterwards we got that contract. That may have been the understanding then, but I was so little there I was not familiar with the details after that. I was only there a few times to draw a contract for them, and then went home again. Contract with Co. got afterwards.

400 *Notice to take depositions.*

Circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne and the Mount Vernon Railroad Company. } Bill in chancery. Notice.

To Charles A. Beecher, esq., attorney for defendants:

Please to take notice that Angus M. Grant, T. B. Tanner, W. Duff Green, Harvey T. Pace, Joel Pace, Charles T. Pace, John C. Gray, Noah Johnston, W'm Dodus, Joel F. Watson, Thomas Hobbs, and others, residents of Jefferson County, Illinois, are witnesses whose testimony is necessary in this cause, and who reside in said Jefferson
401 County, Illinois, will be examined on the part of the complainants in this cause before a notary public duly appointed by the governor of said State, for the county of Jefferson, in the southern district of Illinois, at Mount Vernon, the county-seat of Jefferson County, at his office, in said town of Mount Vernon, in said southern district of Illinois, on the sixth day of September, A. D. 1869, at 10 o'clock in the forenoon, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated Fairfield, 23rd day of August, A. D. 1869.

Yours, etc.,

WALTER B. SCATES,
Attorney for Complainants.

Acceptance of notice.

I hereby accept and acknowledge service of a copy of the above notice, on behalf of defendants, at Fairfield, Wayne County, Illinois, this 23rd day of August, A. D. 1869.

C. A. BEECHER,
Attorney for Defendants.

402 *Certificate of notary.*

UNITED STATES,
Southern District of Illinois, ss:

Be it remembered that, on the sixth day of September, A. D. 1869, personally appeared Angus M. Grant, Harvey T. Pace, W. Duff Green, before me, John W. Baugh, a notary public appointed by the governor of the State of Illinois, in and for the county of Jefferson, in the southern district of Illinois, and duly authorized under the laws of the United States to take affidavits and acknowledgments, etc., testify, and in truth to say on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Spingfield, Illinois, wherein John W. Kennicott, Thomas Upham, Eleazer W. Stone, Joseph W. Ward, and Austin Myers are the complainants, and the Board of Supervisors of the County of Wayne and
403 The Mount Vernon Railroad Company are the defendants, on a bill in chancery; and the said witnesses, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Deposition of Harvey T. Pace.

HARVEY T. PACE, being introduced and duly sworn, deposeth and testifieth as follows, to wit:

My age is 64 years. I have resided in Mount Vernon for forty years. My occupation is that of a merchant. I recollect that a meeting was held in Mount Vernon over Joel Pace's store, sometime, I think, during the year 1856. I recollect that Downing Baugh acted as secretary of the meeting. I think the meeting took place in the spring of the year. I recollect that John M. Johnson, Thomas M. Casey, Zadok Casey, and myself were present, and I think that Judge Scates was also
404 there; also Dr. Green. The object of the meeting, I think, was to consolidate the stock of the Mt. Vernon Railroad Company and the Belleville and Fairfield Railroad Company. There was a transfer of stock, I think, on that occasion, but I don't recollect which company it was that made the transfer, or to which company the stock was transferred. The Mt. Vernon Railroad Company, however, transacted business, and I think the Belleville and Fairfield Railroad Company was not much known after that time. I remember now that at the meeting above referred to John M. Johnson could not have been present if it was held in 1856, because I know that he died in the year 1855, hence I must be mistaken about the year that the meeting took place, or about John M. Johnson being present. I think that the meeting was held in 1855 or 1856, but can't state which. At the meeting above referred to, my impression now is that there was a consolidation of the two companies, but I am not certain about the fact.

405 (The whole of this testimony, except the preliminary statements, objected to by C. A. Beecher, esq., att'y for def't.

H. T. PACE

Subscribed and sworn to before me this 7th day of September, A. D. 1869.

J. W. BAUGH,
Notary Public.

406 *Deposition of W. Duff Green.*

W. DUFF GREEN, being introduced and duly sworn, deposeth as follows, to wit:

My age is 48 years; have lived in this place about 23 years. I can't state with any certainty, but I have an impression that there was at some time a co nsolidation made of the Mount Vernon Railroad Company and the Billeville and Fairfield Railroad Company. I don't think I was present at the time said consolidation was made, and have no personal knowledge of it.

(The testimony in reference to the consolidation above stated is objected to by C. A. Beecher, esq., att'y for def'ts.)

W. DUFF GREEN.

Subscribed and sworn this 7th day of September, A. D. 1869.

J. W. BAUGH, *Notary Public.*

407 *Certificate of J. W. Baugh, Notary Public.*

STATE OF ILLLNOIS, *Jefferson County ss.*

I, John W. Baugh, a notary public in and for the said county and State aforesaid, do hereby certify that the reasons for taking the foregoing depositions and the fact is that the witnesses are residents of the county of Jefferson and State aforesaid.

I further certify that a notification of the time and place of taking said depositions was made out and is hereunto annexed.

I further certify that, on the 6th and 7th days of September A. D. 1869, I was attended by the Hon. Walter B. Scates, of counsel with the said complainants, and by Charles A. Beecher, esq., of counsel with the said defendants, and by the witnesses, who are of sound mind and lawful age, and the witnesses having been by me carefully examined and cautioned and sworn to testify the whole truth, the depositions were by me reduced to writing in the presence of the witnesses, who subscribed
408 the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this 7th day of September, A. D. 1869.

J. W. BAUGH, NOTARY PUBLIC. L. S.

J. W. BAUGH, *Notary Public.*

(Indorsed:) Filed, and opened per stipulation on file, November 25th, 1869. J. A. Jones, cl'k.

409 *Circuit court of the U. S. south. district of Illinois.*

JOHN. W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, JOSEPH W. WARD, AUSTIN MYERS.

vs.

THE MOUNT VERNON RAILROAD COMPANY, and the Board of Supervisors for Wayne County.

DISTRICT OF MASSACHUSETTS, *City of Boston:*

Be it remembered that, on this twentieth day of November, in the

year of our Lord one thousand eight hundred and sixty-nine, before me, the subscriber, a commissioner of the circuit court of the United States for the district of Massachusetts, duly appointed to take affidavits and bail in civil causes and for other purposes, came one of the plaintiffs in the above-entitled cause, and requested me to take the depositions of Norman A. Smith, Joseph W. Ward, witnesses for the plaintiffs in the above-entitled cause; and, it appearing to me on the oath of a sufficient witness that the above-named several witnesses resided at a
410 greater distance than one hundred miles from the place of trial of the above-named cause, and that neither of the said adverse parties nor any attorney of either resided within one hundred miles of the place of taking said proposed depositions named in the caption hereof, I caused the said witnesses to come before me on the day and year aforesaid, at my office in the said city of Boston, and thereupon Norman A. Smith, a witness for the plaintiff, appearing, was by me carefully examined, cautioned, and sworn to testify the whole truth, and made answers to the interrogatories as hereinafter follows.

Deposition of Norman A. Smith.

Norman A. Smith's deposition.

Interrogatory 1st. What is your name, age, residence, and business?

He says: Norman A. Smith; age forty-five years; reside, Ware, Hampshire County, Massachusetts; am a railroad contractor.

Inter'og. 2. Were you engaged in the construction of the M't Vernon Railroad in the State of Illinois, about the year 1858?

411 He says: I was, in company with other members of our firm of Smith, Van Duzen & Co.

Inter. 3. Whether or not you ever held any office in the corporation of the M't Vernon Railroad, and what?

He says: I was a director, and also the treasurer of the company from 1858 to the spring of 1860.

Int. 4. What do you know about the getting up and issue of the bonds of that railroad company called their construction bonds?

He says: I got up the form of said bonds, caused them to be prepared and executed by the proper officers of the railroad company, signed each of them myself, as treasurer, and delivered them according to the vote of the corporation. The total amount of bonds issued was eight hundred thousand dollars.

Inter. 5. Whether or not any mortgage was made to secure these bonds, and by whom and when?

412 He says: There was a mortgage made by the county of Wayne on one hundred thousand acres of land to secure this issue of eight hundred thousand dollars of bonds. The judges of the county executed this mortgage deed. It was all done in open court, and I was present. The only one of said judges whom I now remember was Judge Wilson. I recollect his being present. He then, and for a long time after, was agent and counsel for the county in all matters pertaining to said bonds and the business of the road. I saw at this time a written authority in his possession, signed by his associates on the bench, authorizing him to act for them on said subject. I read this authority at that time, and have seen it more than twenty times.

Inter. 6. To whom was this mortgage executed?

He says: To Isaac Seymore, of New York City, trustee for the security of the bonds.

Inter. 7. Were these bonds deposited with Isaac Seymore, trustee, and for what purpose?

He says: They were for the purpose of his signature; after signing them he returned one-half of them to me, as treasurer of the com-
413 pany, and the other half he retained as custodian for the county of Wayne, subject to the order of the county judges.

Inter'og. 8. What was done with the bonds received?

He says: A large portion of them was used as collateral security for contracts for furnishing labour and materials for building the road. The company gave this collaterial security to perform their own obligations.

Inter'og. 9. What disposition was made by Wayne County of their half of the bonds?

He says: They were withdrawn from the trustee by their duly authorized agent, Judge Wilson, to negotiate them for the use of the road.

Inter. 10. Was there a consolidation between the Mount Vernon Railroad Company and the Belleville and Fairfield Railroad Company, by which a connection was made of their roads?

He says: There was. When our firm were making our contract at the court-house for the building of the Mount Vernon Railroad it was represented to us by the county authorities then present that the commissioners had effected said consolidation.

414 Int. 11. Was there a vote of Wayne County to make a donation to the corporation of said lands?

He says: There was.

Int. 12. Did you or not see the book in which was recorded the acts of consolidation of the two corporations named in the tenth interrogatory?

He says: I did. I first saw it in the possession of the railroad company.

Int. 13. When and where did you last see said book?

He says: In possession of said company at Mount Vernon, Illinois, in the spring of 1858.

Int. 14. When did you resign as treasurer and director, and who was your successor?

He says: About June, 1860. Charles W. Lewis was my successor. I transferred to him all the books, papers, and vouchers of the company in my possession.

Int. 15. By whose orders were the treasurer's papers, &c., delivered to Charles W. Lewis?

He says: By order of Judge Wilson, as director of the company and agent of the county of Wayne.

Int. 16. Whether or not the county of Wayne was connected with the Mount Vernon Railroad Company of Illinois, in the construc-
415 tion of said road, and the using of said securities for the construction of said road?

He says: They were; and transacted all their business thro' their agent, Judge Wilson, who acted under written authority, as above stated.

NORMAN A. SMITH.

416 *Deed of trust of Wayne Co. to Wood.*

County court, Wayne County, to Charles Wood.

This indenture, made and entered into this 13th day of March, in the

year of our Lord one thousand eight hundred and fifty-six, by and between Daniel Turney, judge of the county court of Wayne County, Illinois, William Ellis, and Samuel Hooper, associate judge of said county court of the first part, and Charles Wood, of said Wayne County, of the second part, witnesseth:

That, whereas the Congress of the United States of America, on the twenty-eig'th day of September, in the year of our Lord one thousand eight hundred and fifty, passed an act entitled "An act to enable the State of Arkansas and other States to redeem the swamp lands within their limits," wherein was granted and donated to the State of Illinois all the unsold swamp and overflowed lands within the limits of said State:

417 And whereas the legislature of the State of Illinois, on the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, passed an act entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same;" wherein was granted and donated to each of the several counties of the State of Illinois all the said swamp and overflowed lands lying, situated, and being within the limits and boundaries of each of said counties, severally and respect*fully:*

And whereas the legislature of the State of Illinois, on the 15th day February, in the year of our Lord one thousand eight hundred and fifty-five, passed an act entitled "An act to incorporate the Mount Vernon Railroad Company," wherein, amongst other things, it was provided in the third section that when an amount equal to one thousand dollars per mile of the route of said road is subscribed the subscribers may meet at Mount Vernon and elect seven directors; and whereas,

418 there having been upwards of one thousand dollars per mile of said road subscribed, the stockholders met at Mount Vernon, on the thirteenth day of November, 1855, and elected Walter B. Sca*les*, John R. Allen, Downey Baugh, Newton R. Corey, John N. Johnson, Timothy Condit, & Hezekiah B. Newby directors of said company; and whereas, afterwards, to wit, on the 14th day of November, 1855, at a meeting of said directors, Walter B. Sca*les* was elected president, Downing Baugh secretary, and John R. Allen treasurer of said company; and whereas, by said act of incorporation, the county court of Jefferson County were authorized and empowered to subscribe for such amount of the capital stock of said company as they may see proper; they may issue bonds of the county and provide for the payment of principal and interest thereof, by sale or mortgage, one or both, of the swamp and overflowed lands of said county; or they may make such other disposition of said swamp and overflowed lands in aid of the construction and maint*ai*nance of such railroad as they may deem for

419 the public interest of said county—the county com'r may, at any regular or special term of said court, order a special election to be held for the purpose of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted, returns made, canvassed, and published in all other respects as other county elections—the county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in constructing said railroad, which said propositions shall be printed at large on an election ticket, and the voters may express their will on said proposition by voting "Yea" and "Nay" on said ticket; and whereas said county court, at the term, 1855, ordered an election to be held on the Tuesday after the first Monday in November, 1855:

And whereas, at a special term of said Jefferson County court, held at Mount Vernon, on the 17th day of August, 1855, it was ordered that the following proposition, for the disposal of the swamp and overflowed lands, and the proceeds of them sold *is* preëmpted in aid of the
420 Mount Vernon Railroad, be submitted at the election *ticket* under the provision of the charter of said Mount Vernon Railroad Company, at the election on that subject, on the Tuesday after the first Monday in November next, that a donation be made by the county of all the swamp *l*and overflowed lands of Jefferson County not sold or preëmpted, and the net proceeds of such as has been or may be sold under preëmption rights or entered by mistake, to the Mount Vernon Railroad Company, upon condition that the company build and complete a railroad from Mount Vernon to Illinois Central Railroad, or its Chicago branch, one or both, and have the same in operation within three years from said election, and keep the same in operation; and whereas, afterwards, to wit, on the Tuesday after the first Monday in November then next ensuing at said election there w*as* nine hundred and ninety-six votes cast for said proposition, and two hundred and thirty against it, as appears by the canvasser's certificate of said election now on file in the office of the clerk of the county court of Jefferson County,
421 Illinois:

And whereas, in the 10th section of the aforesaid Mount Vernon Railroad charter, it is further provided that any county through which said railroad may run, and any county through which any other railroad may run, to which this railroad may be joined, connected, or intersected, *may* are hereby authorized and empowered to aid in the construction of the same, or of such other railroad with which it may so connect, and for this purpose the provision of the 7th, 8th, and 9th sections of this act extend, include, and be applicable to every such county, and to every such railroad; and whereas the legislature of the State of Illinois, on the day of February, A. D. 1855, passed an act entitled "An act to incorporate the Belleville and Fairfield Railroad Company," wherein is authorized the construction of a railroad from Belleville, in St. Clair County, in Illinois, and to run from thence through Nashville, in Washington County, and through Mount Vernon, in Jefferson County, and to Fairfield, in Wayne County, Illinois, and in said the
422 following persons are appointed the board of directors, viz, Henry Godkin, James L. D. D. Morrison, William Kenny, John Moss. Russell Hackley, Alexander D. Keneday, C. C. Coffer, J. M. Lucas, John M. Johnson, Thomas M. Casey, H. T. Pace, Edward Bonham, Daniel Turney, John Keen, and John Moore, who shall hold their office until their successors are elected and qualified; and whereas all of said persons have signified their willingness to act and perform all the duties appertaining to said office of directors of said company, and the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, a meeting of said directors was held at Nashville, in Washington County, Illinois, when Harvey T. Pace was elected president, John N. Johnson treasurer, and Joel Watson secretary of said Belleville and Fairfield Railroad Company:

And whereas the line of the Belleville and Fairfield Railroad will join to and connect and intersect with the aforesaid Mount Vernon Railroad, at some convenient point at or near Mount Vernon, and
423 thereby the said Belleville and Fairfield Railroad will become a part of, and elongation and extension of said Mount Vernon Railroad, and thereby fully and legally authorized and empowering the counties of St. Clair, Washington, and Wayne, (through which said

Belleville and Fairfield Railroad is situated,) to use, exercise, and enjoy all the powers, rights, and privileges of appropriating and donating all the swamp and overflowed lands respectively belonging to said counties, for the purpose of aiding in the construction of the said Belleville and Fairfield Railroad, or any other line of railroad which m y pass through any of said counties, and be joined to and connected, or intersected with the said Mount Vernon Railroad, or which may be joined or connected and intersected with the said Belleville and Fairfield Railroad, because of, and by reason of, the said Mount Vernon Railroad being joined to connect' and intersect' with the said Belleville and Fairfield Railroad, at or near Mount Vernon as aforesaid:

And whereas, under the authority and by virtue of the pro-
424 visions contained in the said tenth section of the aforesaid act to incorporate the Mount Vernon Railroad, the county court of Wayne County, in said State of Illinois, for the purpose of aiding in the construction of the said Belleville and Fairfield Railroad, and of the Alton, Mount Carmel and New Albany Railroad, held a special term of said court on the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, and then these passed an order that, on Tuesday after the first Monday in November, 1855, an election should be held by the legal voters of Wayne County, for the purpose of voting for or against donating the unsold swamp and overflowed lands of that county to any company that would build and complete, in a reasonable time, a railroad through and across the limits of said county, from the east to the west side thereof, that is to say, from the town of Fairfield to the west line of said county, on the route of the Belleville and Fairfield Railroad, and from Fairfield to the east line of said county,

along the route of the Alton, M't Carmel and New Albany Rail-
425 road line, as heretofore located and partly graded by the State of Illinois—and, after due notice of said election had been given by the said county court of Wayne County, to the legal voters of said county, on Tuesday, after the first Monday in November, 1855, an election was held throughout the said county of Wayne "for" and "against" the donation of all the unsold swamp and overflowed land belonging to said county, to be given and granted as a bounty and premium to any company that will construct and finish a railroad across said county as aforesaid, when, at the said election, there were eight hundred and thirty-one votes (831) given in favor of and for said donation, and there were two hundred and fifty-eight votes given against said donation, as appears by the canvassers' report, a certificate of said election now on file in the clerk's office of the county court of Wayne County aforesaid:

And whereas the Alton, M't Carmel and New Albany Railroad charter provides and authorises said railroad shall be made from Jeffersonville,

in the State of Indiana, opposite the city of Louisville, in Ken-
426 tucky, and shall run through New Albany and the southern portion of the State of Indiana to Mount Carmel, in the State of Illinois, and thence through Albion, in Edward's County, and through the aforesaid town of Fairfield, in Wayne County, Illinois—and that part of said railroad from Mount Carmel to Albion has heretofore been located and graded by the State of Illinois, and from Albion to Fairfield has heretofore been located and partly graded by said State—therefore, the Alton, Mount Carmel and New Albany line of railroad passing through the whole width of Edward's County, on its route from Mount Carmel to Fairfield, will thereat be joined to, and there connect and intersect with, the Belleville and Fairfield Railroad, and by said conjunction, connection, and intersection of the Belle-

ville and Fairfield Railroad with the Alton, Mount Carmel and New Albany Railroad at or near the town of Fairfield, it will constitute, conclude, and continue the elongation, junction, and extension of the Mount Vernon Railroad through and along the length of the Belleville and Fairfield Railroad, and thence from *from* Fair-
427 field to and through and along the length of the Alton, Mount Carmel and New Albany Railroad, thereby creating and constituting an extension of the Mount Vernon Railroad all the way from the town of Mount Vernon to Jeffersonville, opposite the city of Louisville, Kentucky—and, by reason of and through the aforesaid junction, connection, and intersection of the Alton, Mount Carmel and New Albany Railroad with the Bellville & Fairfield Railroad, and through and along the line of the last-mentioned railroad to the town of Mount Vernon, thereby forming a complete junction, connection, and intersection with the said Mount Vernon Railroad, the county of Wayne becomes duly, legally, and rightfully authorized and empowered, by the provisions of the said Mount Vernon Railroad charter, to apply, appropriate, use, and donate all the unsold swamp and overflowed lands belonging to said county, for the use and purpose of aiding in the construction of Belleville and Fairfield Railroad, and of the Alton, Mount Carmel and New Albany Railroad, across the limits of said Wayne County:

428 And whereas, furthermore, the charter of the said Alton, Mount Carmel and New Albany Railroad Company to construct a branch of said railroad to Illinoistown, opposite the city of St. Louis, in Missouri, and long before the legislature of Illinois had passed the "Mount Carmel" and the Belleville and Fairfield Railroad charter, the board of directors of the Alton, Mount Carmel and New Albany Railroad Company had passed a resolution stating and fixing the location of the line of the said branch railroad to run from Fairfield through the town of Mount Vernon, Nashville, and Belleville to Illinoistown, opposite St. Louis, and for the reason, and by and through the means of the aforesaid prior location of the said branch railroad through the aforesaid towns along the very same line and routes, and previous to the passage of the charter of the Mount Vernon Railroad and of the Belleville and Fairfield Railroad, the most intimate and perfect junction, connection, and intersection will be effected, as well as the mutual elon-
429 gation, extension, union, and consolidation of the Mount Vernon Railroad with the Belleville and Fairfield Railroad, and also with the Alton, Mount Carmel and New Albany Railroad, will be secured and thoroughly united with each other, and thereby constituting one continuous air-line railroad from Jeffersonville, in Indiana, to Illinoistown, in Illinois, commonly designated the Louisville and St. Louis air-line railroad—and for all these reasons, and by virtue of the aforesaid junction, connection, and intersection, extension, consolidation, and union of the Mount Vernon Railroad with the Belleville and Fairfield Railroad, and also with the Alton, Mount Carmel and New Albany Railroad, as hereinbefore described and set forth, the aforesaid county of Wayne is tho'ughly entitled and lawfully authorized and empowered by and through the provisions of the said tenth section of the Mount Vernon Railroad charter to donate all the swamp and overflowed lands of and belonging to the said county of Wayne for the purpose of aiding in the connection of the said Belleville and Fairfield Railroad and of the Alton, Mount Carmel and New Albany Railroad, running from
430 *from* west to east through and across the whole width of said Wayne County:

And whereas, on the first day of December, in the year of our Lord

one thousand eight hundred and fifty-five, at a special term of the county court of Edwards County, Illinois, it was then and there ordered by said county court that an election should be held on the first day of January thereafter next ensuing, to wit, 1856, at the several precincts and places of voting in said Edwards County, calling upon the citizens of said county to vote "for" or "against" donating the unsold swamp and overflowed lands in this county to any company that will make and finish a railroad through and across the limits of said county of Edwards along the line of the Alton, Mount Carmel and New Albany Railroad, on the condition that the said railroad be finished in a reasonable time—and also, that the title of said swamp lands shall not be surrendered by this county until the said railroad shall be first made and finished, (from said donation are excepted all swamp lands upon which preëmp-
431 tion claims have been taken, and also, sufficient of said lands to pay the expenses of surveying, &c.,) and it understood by the court that, if a majority of the votes cast at said election shall be given "for a railroad," that then all the unsold swamp lands in said county (except the reservation aforesaid) shall be given to any company that will make and complete the aforesaid railroad in a reasonable time:

And whereas public notice was fully and legally given of said election, and of the foregoing order and conditions thereof, at each and at all of the several precen'ts and places of voting, and by one hundred printed copies of the foregoing conditions and order of said county court being duly posted at the most prominently public places in said county, and thereafter said election was duly held throughout said county of Edwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-six, and at said election there were three hundred and sixty-eight votes cast and given "for" the aforesaid donation of the swamp lands of Edwards County, and forty-five
432 votes were cast and given "against" said donation, as appears by the certificate and report of the canvassers of said election, now on file in the clerk's office of the county court of said Edwards County, Illinois: therefore the county court of said county of Wayne, for the purpose of carrying into full effect the will of the people of the said county as expressed by them at their election, in favor of appropriating and using the whole of the unsold swamp and overflowed lands belonging to said county (except the reservation thereof hereinafter made and stated) by donating the same unto the Belleville and Fairfield Railroad Company and to the Alton, Mount Carmel and New Albany Railroad Company, and to any other company, who will make and finish said line of railroad across said county, as hereinafter described and fully set forth: therefore, in order to satisfy the justly founded expectations of any company that may be found willing to expend their money in making said railroad across said county on the condition of their receiving the aforesaid grant and
433 donation of said swamp and overflowed lands as their reward and recompense therefor to aid them in the making and finishing said railroad, with the reservation and on the conditions aforesaid, as set forth in the aforesaid order of the county court, and published throughout said county along with the notices given for holding said election, and on which said election was founded, and for which reservation and conditions said votes were given at said election for said donation of said swamp and overflowed lands of said county of Wayne: Now, therefore, in consideration of the premises, the county court of Wayne County, Illinois, at a special term of said court, held in the court-house at Fairfield, this thirteenth day of March, in the year of our Lord one thousand

eight hundred and fifty-six, pass and ordain an order of said court to make, execute, sign, seal, and deliver the following deed of trust, with the foregoing preamble hereunto annexed, and made a part of *of* said deed, explaining the conditions thereof and therein contained.

Therefore, this indenture, made this thirteenth day of March,
434 in the year of our Lord one thousand eight hundred and fifty-six, between Daniel Turney, judge of the county court of Wayne County, in the State of Illinois, and William Ellis and Samuel Hooper, associate justices of said county court, of the first part, and Charles Wood, trustee, of the second part, witnesseth:

That the party of the first part, in consideration of the premises above-recited, and hereunto annexed and exhibited on the foregoing twelve pages, and in pursuance of the authority vested in said court by the aforesaid act of the legislature of the State of Illinois, entitled "An act to incorporate the Mount Vernon Railroad Company," approved February the fifteenth, in the year of our Lord one thousand eight hundred and fifty-five; and also, in pursuance of the authority so vested in said county court, by virtue of and in accordance with a vote given by the legal voters of said Wayne County, at an election held on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-five, as heretofore set forth; and for the further considera-
435 tion of the sum of one dollar, of good and lawful money of the United States, to them in hand paid by the said Charles Wood, the party of the second part, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Charles Wood, the party of the second part, all the unsold swamp and overflowed lands, be they more or less, belonging to the said county of Wayne, and lying and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to and the property of the said county of Wayne aforesaid, as exhibited by the hereinbefore-mentioned act of Congress of the United States of America, bearing date on the twenty-eight day of September, in the year of our Lord one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," wherein was granted and donated to the State of Illinois all of the unsold swamp and overflowed lands within the limits of said State; and also, as exhibited by the act
436 of the legislature of the State of Illinois, passed and dated on the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying," lying, being, and situate within the limits and boundaries of each of said counties severally and respectively, (hereby expressly excepting from said sale all swamp lands upon which preëmpt*ing* claims have or may hereafter be taken, and also sufficient of said lands to indemnify the said county against all expenses attending the selling, surveying, and drainage, or in anywise accruing to said county on account of said land:)

To have and to hold all and singular the above-granted and described premises, with the appurtenances thereunto belonging, to the said Charles Wood, and to his successors, until all the uses and trusts herein set forth and declared shall lawfully and completely be accomplished. And the said Charles Wood shall not, in any matter or thing, be liable or responsible other than he shall be accountable for

437 the exercise of reasonable diligence in the management of said trust:

Nevertheless the foregoing conveyance is made for and upon the express trusts and conditions following, that is to say—

First. This conveyance is made to the said Charles Wood, as trustee, to hold the said lands for the purpose expressed in the recital in the fore part of this deed, and to manage and secure the same in the meantime, and until the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other company with which they may connect or unite for that purpose, shall build or cause to be built a railroad across the limits of said Wayne County, Illinois, from west to east.

Secondly. The said Charles Wood, as such trustee, shall have the care, oversight, and management of all said lands, and shall give diligent attention to preserve the same from all trespasses, damages, and wastes, and use all legitimate and necessary means for that purpose, and for the detection and punishment of and for the recovery of damages and compensation from them who may be guilty thereof.

438 Thirdly. The said Charles Wood, as such trustee for said lands, shall keep and render, at all times, when required by the county court, or the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, a full, fair, accurate account to said county board, and to said railroad company, of all monies received and paid by him for and concerning all wastes and damages done to said premises, or for or concerning his duties as said trustee.

Fourthly. The real estate, rights, interests, and equities herein conveyed to the said Charles Wood, as such trustee, are hereby expressly declared to be in trust, for the use and benefit of said Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, for the purpose of aid' them to construct and put in operation a railroad across the whole width of the county of Wayne aforesaid. To the end, therefore, and to secure and assign to the said railroad companies,

439 their successors and assigns, the full benefit of the aforesaid donation of the said several tracts of swamp and overflowed lands of and belonging to the said Wayne County, according to the true effect and meaning of the people of said county, as expressed by their votes at said election, it is, therefore, in the—

Fifth place hereby declared, by and with the assent of the people of Wayne County aforesaid, and of the county court of the said county, that, upon the completion of the said railroad across the county of Wayne as aforesaid, and immediately upon opening to the public for carrying freight and passengers across the whole width of said county, that the said Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, shall be really, and be deemed to all intents and purposes to be, the sole and only beneficiaries and cestuisque, to wit, of all the interests, rights, equities, and lands herein and hereby conveyed and assigned, and shall have the sole right to and control of the same,

440 and the parties herein under this deed, and without hinderance or molestation of the county court or any other person or party, and said trustee is hereby authorised, directed, and required to do and act in all things thereafter as they may be directed or required in selling, conveying, or otherwise disposing of the same. Provided, always, and

it is expressly understood, that the said railroad shall be surveyed, located, and the work commenced in Wayne County, Illinois, on or before the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and shall be completed and put in operation on or before the first day December, A. D. one thousand eight hundred and fifty-nine, or else this conveyance, and all the trusts herein expressed, shall cease and become null and void, and in that case the said trustee shall reconvey the same to the county of Wayne, or such other or others as he may be directed by said court.

Sixthly. It is further stipulated, agreed, understood, and declared between the county court of said county of Wayne, and the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel
441 and New Albany Railroad Company, their successors and assigns, who are hereby recognised and declared to be the real parties in interest in this deed, that in case of the death, removal by the parties hereto, or by the resignation of the said Charles Wood as such trustee, his inability to act in or to carry into effect the trusts herein declared, and the true interest and meaning of the parties in interest, that said parties reserves the right to, and agree they will unite in nominating and appointing another to act as trustee in the place of the said Charles Wood, who shall thereupon be invested with all the legal and equitable powers, and be chargeable with all the liabilities and duties, as if named in the deed, to all intents and purposes whatsoever, and so from time to time as there may be any vacancy in said trusteeship. Said appointment shall be signed by the clerk of the county court, and the secretary or other proper officer of said company or their assigns, and be sealed with the proper seal of each party thereto.

Seventhly. The said county court of Wayne County aforesaid, and the Belleville and Fairfield Railroad Company, and the Alton,
442 Mount Carmel and New Albany Railroad Company, their successors or assigns, hereby reserve the right and power to remove said trustee, and appoint another as above provided, at any time they may deem it for their mutual interests so to do. And it is expressly understood and agreed by and between the parties to this deed of trust that, in the event that said railroad shall not be commenced and completed in manner and form as set forth in the above fifth clause of this deed, and the lands herein conveyed revert to the said county of Wayne, then and in that case there shall not be any cost, charge, or incumbrance whatsoever on said swamp and overflowed lands hereby conveyed by virtue of any services that may be done, had, or performed under this said deed of trust.

Eight'ly. The said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, or their assigns, shall build or cause to be built a depot and station house on said railroad within the present limits of the town of Fairfield, in said
443 Wayne County; also, one station east and two stations west of said town, and within the limits of said Wayne County.

In testimony whereof the said county court of Wayne County aforesaid, parties of the first part hereto, have hereunto set their hands and private seals the day and year aforesaid.

N. B. The words "the Alton, M't Carmel and New Albany Railroad," on the 6th, 9th, and 10th pages, and the words "and to the Alton, Mount Carmel and New Albany Railroad Company," on pages 12th, 16, 17, & 18, and on page 18 the words "in Wayne County, Illinois," & on pages 19 and 20 the words "and the Alton, Mount Carmel and New Albany Rail-

road Company," interlined before signing, and erasures made on page 14 before signing.

D. TURNEY, [SEAL.]
County Judge.
WILLIAM ELLIS, [SEAL.]
Associate.
SAMUEL HOOPER, [SEAL.]
Associate.

Attest: [SEAL.] JOHN TROUSDALE,
Clerk County Court, Wayne County, Illinois.

Filed 20th June, 1856.

J. G. BARKLEY,
Clk Cir. Court.

444 STATE OF ILLINOIS, *Wayne County, ss:*

I, John L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing deed of trust from the county court of Wayne County to Charles Wood, trustee, is a true and perfect copy as appears of record in my office.

Given under my hand and official seal at my office in Fairfield, this 20th day of December, A. D., 1869.

[SEAL.] JOHN L. HANDLEY, *Clerk.*

445 Charles Wood, trustee to Wayne County.

Know all men by these presents that I, Charles Wood, trustee, to whom the swamp and overflowed lands of Wayne County, Illinois, have been conveyed in trust for the use of the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other railroad company with which they might connect for that purpose, that should build or cause to be built a railroad across the county of Wayne *County*, from west to east, said lands now conveyed to me in trust for said companies, by Daniel Turney, county judge, and William Elles & Samuel Hooper, esq's', associate justices of said county of Wayne, on the 13th day of March, A. D. 1856, by a deed of trust, which will be found recorded in record book K, pages 104 & 418, inclusive, conveying said lands as aforesaid on certain conditions expressed and set forth in said deed, and describing said lands as follows, to wit:

445½ All the unsold swamp and overflowed lands, be they more or less, belonging to the said county of Wayne, and lying and being and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to, and the property of, the said county of Wayne aforesaid, as exhibited by the hereinbefore mentioned act of Congress of the United States of America, bearing date the twenty-eight' day of December, in the year of our Lord one thousand eight hundred and fifty.

Now, I, Charles Wood, trustee, as aforesaid, in consideration that said railroad companies have failed to comply with the conditions of said deed, as set forth therein, and in pursuance of the requirements to recover said lands contained in the fifth clause of said deed of trust, and in obedience to an order of the county court, passed on the 20th day of August, 1857, in which I am ordered to reconvey said lands to the county of Wayne, I do hereby reconvey, remise, release, and forever quit-claim unto Dan'l Turney, judge, and W'm Elles, & Sam'l Hooper, esq., as-

sociate justices of the county court of said county of Wayne, for the
446 use of the people of said county, all my right, title, interest, and claim in and to said lands: To have and to hold the same with all the privileges and appurtinances thereunto belonging to the said Dan'l Turney, W'm Ellis, and Sam'l Hooper, and their successors in office for the use of the people of Wayne County as aforesaid, forever, so that neither I, the said Charles Wood, or my heirs, or any other person claiming from or under me or them, or in the name, right, or stead of me or them, shall, by any way or means, have claim, or demand any right, title, or interest in and to the aforesaid swamp or overflowed lands or their appurtinances, or to any part or parcel thereof forever.

In witness whereof I, the said Charles Wood, trustee as aforesaid, have hereunto set my hand and seal this 22nd day of August, A. D. 1857.

CHA'S WOOD, *Trustee.* [SEAL.]

STATE OF ILLINOIS, *Wayne County:*

Be it remembered that, on this 22*rd* day of August, A. D. 1857, personally appeared before me the undersigned clerk of the county court
446½ in and for said county, Charles Wood, trustee, &c., to me known to be the real person whose genuine signature appears to the foregoing conveyance, and acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal of said court, at Fairfield, the day and year above written.

[.] JNO. TROUSDALE, *County Clerk.*

Filed 26 August, 1857.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, *Wayne County:*

I, Jno. L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing to be a true and perfect copy of a deed given by Charles Wood, trustee, to Wayne County, as appears of record in my office.

Given under my hand and official seal this 15th day of December, A. D. 1869.

[L. S.] JNO. L. HANDDLY, *Clk.*

447 *Plaintiff's side again.*

Plaintiff's side again. Goodwin, S. A.

STEPHEN A. GOODWIN sworn.

This contract, dated January 26, 1860, which has been excepted to, between Jameson, Newcomb, and Elliott, and the Mount Vernon Railroad Company, is witnessed by Thomas T. Davis. He resides in Syracuse, New York. I know his writing, and this attestation is in the writing of Thomas T. Davis. The body of the contract is also in his handwriting, showing that he drew it.

Signature of Tho's L. Davis.

The court then adjourned to ten o'clock next day.

THIRD DAY.

Third day, 10 a. m.

NOV. 9TH, 1870—*ten o'clock, a. m.*

Mr. GOODWIN. If the court please we wish to show that

Wayne County, at the time of the execution of this deed of trust, had not adopted a permanent organization.

Wayne Co. under old co. court organization, when deed was made.

The COURT.—It is admitted that, at the date of
448 the mortgage and deed of trust, the county was acting under the old county court organization.

Articles of consolid. filed.

The reporter here produced his copy of the articles of consolidation between the New Albany and Mount Carmel, and Belleville & Fairfield Railroad, which was given to the clerk to be filed.

The case then went to argument.

449 *Agreement between U. Jameson & Mt. Vernon R. R. Co.*

Agreement made at Albany, in the State of New York, January 26th, A. D. 1860, between Uriah Jameson, Mansfield, Ohio, David Newcomb, of Albany, in the State of New York, and James G. Elliott, of the city of New York, of the first part, and The Mount Vernon Railroad Company, of the State of Illinois, a corporation duly chartered and organized under the laws of the State, of the second part, witnesseth: That the parties of the first, in consideration of one dollar to them in hand paid by the parties of the second part, hereby agree to sell and deliver to the parties of the second part in the city of Wheeling, Virginia, and at a convenient point on the Ohio River, for shipment, four thousand eight hundred tons American manufactured railroad iron of good quality, well rolled, of the weight of forty-five pounds to the yard, and as near*by* as may be of the Erie pattern, in the amounts and at the times following, viz:

	Five	hundred tun	March	1st, 1860.
450	Five	hundred tuns	April	1st, 1860.
	Five	" "	May	1st, 1860.
	Eight	" "	Oct.	1st, 1860.
	Eight	" "	Nov.	1st, 1860.
	Seven	" "	December	1st, 1860.
	Ten	" "	January	1st, 1861.

each tun to be gross weight, 2,240 pounds, the said bars to be well made, and not to be less than twenty-one feet.

The foregoing agreement is made upon this express condition that the said Mount Vernon Railroad Company shall pay for the same and for each several parcel, as follows, on delivery: The price per tun shall be fifty-eight dollars, and when the first five hundred tuns shall be ready for delivery on the first day of March, 1860, the said parties of the second part shall pay to the parties of the first part one quarter of the purchase-money, in cash or currency, bankable at Wheeling or its vicinity, and the residue in the bills of the Whitfield Bank, at Dalton, Georgia, making up the sum of fifty-eight dollars per ton, as
451 aforesaid. The said parties of the second part also agree that they will, as a security for the redemption of said bills of said bank of Whitfield, deposit with the Merchant's Bank of Wheeling, or some other bank to be agreed upon by the parties as a special deposit, the first-mortgage bonds of The Mount Vernon Railroad Company, called construction bonds, for which Isaac Seymour, of New York, is trustee, at fifty cents to the dollar, to the amount of three-fourths of the purchase-money of the first five hundred tons of iron.

The currency of said bank shall be duly and properly marked to identify the bills, and the parties of the first part agree to redeem or protect

the same during the period of six months from the date of the receipt thereof, at an agency of said bank in Cincinnati, if one shall be established there, by currency bankable at Cincinnati, and at the rate at which the bills of said bank shall be quoted at Cincinnati, and
452 shall, at all times, keep such currency from being dishonored at such agency during said term of six months. Whatever currency of that received on said first delivery of iron and marked as aforesaid shall be on hand in the possession of the said parties of the first part at the expiration of said term of six months shall be redeemed by the said parties of the second part (said railroad company) by the payment of other bankable money, and the said railroad company shall be entitled to redeem and take up the said mortgage bonds deposited as aforesaid for the security of the first delivery of iron above mentioned.

And it is agreed and understood that each of the said several lots of iron, the delivery of which is above provided, shall be paid for in the same manner and that all the stipulations in reference to the first parcel of 500 ton of iron shall apply to each and every other parcel above stated, dating the times for the delivery respectively thereof. The
453 currency of the Bank of Whitfield on each lot of iron shall be distinctly marked, so that the same can be identified, and it is understood that if other currency issued by said bank shall be marked in the same manner as that which is to be redeemed or protected by the parties of the first part, they, the parties of the first part, shall be no longer bound to redeem or protect such issue. The parties agree to purchase and do hereby purchase the said quantity of iron and to pay for the same as is provided.

It is further agreed between the parties hereto that the parties of the first part shall cause the said rails to be punched for spikes of the chairs as the parties of this second part shall direct, and the parties of the second part shall pay for the same at the rate of fifty cents p'r ton, cash on delivery.

In witness whereof the said parties of the first part have severally signed and executed this agreement and the said parties of the
454 second part have caused the same to be executed in their behalf and in their name, by the executive committee duly authorized thereto and attested by their Treasurer the day and year first above written.

(Signed) U. JAMESON.
DAVID NEWCOMB.
J. G. ELLIOTT.
AUSTIN MYERS.
L. D. CRIPPIN.
Ex. Committee.

Mount Vernon R. R. Company.

455 *Appointment of J. P. Harley, trustee.*

This instrument of writing witnesseth: That we, N. A. Smith, Ira Hersey, L. D. Crippin, S. B. Kendrick, I. T. Vanduzer, the subscribers hereto, have created and do hereby create this special trust, and have appointed and hereby do appoint J. P. Harley, esq., trustee of the said trust, and have delivered to him as trustee and as belonging to the said trust, eighty hundred shares of the capital stock of the Mount Vernon Railroad Company, to wit: N. A. Smith delivered certificates for twenty hundred shares, Ira Hersey delivered certificates for twenty hundred shares, L. D. Crippin delivered certificates for ten hundred shares,

S. B. Kendrick delivered certificates for ten hundred shares, I. T. Van Duzer delivered certificates for twenty hundred shares.

And the said trustee is hereby duly authorized and directed to
456 hold the said certificates of shares of stock subject to and only to the demand or order of Ira Hersey or his assign or assigns, and to deliver the said certificates of shares only to the demand or order of the said Ira Hersey or his assign or assigns, and only on compliance with the following express conditions, to wit:

To deliver on the demand, in quantities as demanded, any part of ten hundred shares to the said Ira Hersey or his assign or assigns, or to his or their order, at any time on or before the first day of April next, on receiving in payment therefor twenty-five (25) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of May next, any part of ten hundred shares on receiving in payment
457 therefor thirty (30) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of June next, any part of ten hundred shares on receiving in payment therefor thirty-five ($35) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on before the first day of July next, any part of ten hundred shares on receiving in payment therefor forty ($40) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of August next, any part of ten hundred shares on receiving in payment therefor forty-five ($45) dollars for each share delivered.

458 Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of September next, any part of ten hundred shares on receiving in payment therefor fifty ($50) for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of October next, any part of five hundred shares on receiving in payment therefor fifty-five ($55) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of November next, any part of five hundred shares on receiving therefor sixty ($60) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to
459 the said party or parties or order, at any time on or before the first day of December next, any part of five hundred shares on receiving in payment therefor sixty-five ($65) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of January, 1861, any part of five hundred shares on receiving in payment therefor seventy ($70) dollars for each share delivered.

And it is a further special condition of this trust that, on the first day of April next, or before, if sold, and on the first day of each subsequent month, the said J. P. Harley, trustee, shall pay one-half of the sum of money so received in payment of said shares of stock to the said parties, subscribers hereto, that is, to each respective subscriber, his
460 heirs, executors, or assigns, a pro rata proportion of the said sum of money, on his proportionate contribution of shares to this trust;

and in like manner to pay to the same parties, after sixty days, the other half of monies so received and not paid under the next provision hereof.

And it is a further condition of this trust that the said J. P. Harley, trustee, is empowered and hereby specially directed to hold, for the term of sixty days after the sale thereof, one-half of the proceeds or sum of money received in payment of said shares of stock, subject at all times, to payment to the said Ira Hersey or his assign or assigns, or his or their order, on demand, on receiving into the trust a proportionate number of shares for the sum of money demanded and paid, at the rate received for such stock or shares delivered from the trust, and the said trustee shall, at all times, hold the said shares so received into the trust subject to the demand of said Ira Hersey his assign or assigns,
461 or his or their order, on the repayment of the money to the trust fund; and it shall be the duty of the trustee, at any and all times, in like manner to receive and deliver shares of stock and pay and receive money for account of this trust. He shall also open a bank account as trustee, to which account he shall deposit all monies received and check for all monies paid.

And on the first of January, 1861, the said trustee shall pay and deliver to the parties, subscribers hereto, their heirs, executors, or assigns, that is, to each respective subscriber, his heirs, executors, or assigns, a pro rata proportion of the balance then remaining in the said trust on his proportionate contribution of shares to this trust, and thus and then close and terminate the trust.

And it is a further special condition of the trust hereby created that it is irrevocable, and binding on each and every subscriber hereto, and on the trustee hereof, for the specified term of its existence, and
462 till closed as above directed.

And it is a further special condition of this trust that the said J. P. Harley, trustee, has, and hereby does, by his written acceptance on the face of this "instrument of writing" of the trust hereby created, agree, obligate, and bind himself, his heirs, executors, and assigns, to each of the respective subscribers hereto, his heirs, executors, and assigns, and also in like manner to and with the said Ira Hersey, his heirs or assigns, to a strict and faithful compliance with, and execution of, all the conditions imposed and hereinbefore fully set forth, agreeable to the true intent and meaning thereof.

And whereas we have executed two duplicates of this "instrument of writing:" number one for the subscribers; number two, the trustees; and number three for Hersey or his assigns; and J. P. Harley, trustee, is hereby directed to deliver and receive the said shares of stock to
463 or of the said Hersey or his assigns, only on the presentation of and after endorsement of such delivery or receipt on the "instrument of writing," designated on the title page as "number three."

In witness whereof we have each respectively hereunto signed our names and set our seals this the tenth day of December, A. D. one thousand eight hundred and fifty-nine.

N. A. SMITH. [SEAL.]
IRA HERSEY. [SEAL.]
L. D. CRIPPIN, [SEAL.]
N. A. S.
S. B. KINDRICK. [SEAL.]
I. T. VANDUZER, [SEAL.]
By attorney, N. A. S.

Witness:
EZRA BALDWIN.

Acceptance of J. P. Harley.

This certifies that I, J. P. Harley, the subscriber hereto, the party named as the trustee of the trust created in and by the within "instrument of writing," have accepted and do hereby accept the position
464 of trustee of the said trust, and as such trustee have received the shares of stock therein named. Therefore, for and in consideration of the sum of one dollar, received from, and to me in hand paid by, each of the respective subscribers to said "writing," and also of one dollar, received from, and to me in hand paid by, the said Ira Hersey, the receipt of which sums of money is hereby acknowledged, I have hereby obligated and bound, and hereby do obligate and bind, myself, my heirs, executors, and assigns, to each one of the parties subscribers to said "writing," his heirs, executors, and assigns, and also to the said Ira Hersey, his heirs, executors, and assigns, to a strict compliance and execution of all the conditions imposed upon the trustee, as set forth in the "instrument of writing" creating said trust, agreeable to the true intent and meaning thereof.

In witness I have hereunto set my hand and seal this the tenth
465 day of December, A. D. one thousand eight hundred and fifty-nine.

JOHN P. HARLEY. [SEAL.]

Witness:
EZRA BALDWIN.

466 *Agreement between Mt. Vernon R. R. Co. & I. T. Vanduzer.*

This agreement, made and concluded this tenth day of October, in the year one thousand eight hundred and fifty-nine, by and between the Mt. Vernon Railroad Company a corporation of the State of Illinois, party of the first part, and I. T. Vanduzer, contractor, of Mount Vernon, Illinois, & E. Gulick and Hager, of New York City, contractor, parties of the second part, witnesseth:

That the said parties of the second part agree, and by these presents do agree, with the said party of the first part, for the considerations hereinafter mentioned and contained, for one dollar lawful money of the United States to them in hand paid, the receipt whereof is hereby acknowledged, to finish and complete the grading, culverts, bridges, ties, side tracks, turn-outs, cattle g'ards, and all necessary ditching, grubbing, and clearing on that portion of the road of said company, commencing at
Ashley, Washington County, Illinois, to Fairfield, Wayne County,
467 Illinois, distance forty-six and one-half miles, making the whole ready for the iron in nine months from the date and ensealing of this instrument, according to the following specifications:

Engineering.—The work is and shall be under the control and supervision of the chief engineer of the company, who shall make and render all estimates between the parties, and render all decisions, which shall be final between both parties.

The chief engineer and his assistants shall be hired at reasonable salaries, and the same be paid by the parties of the second part.

Location.—The work is to be on the located line of the company as it now exists, subject to changes by the chief engineer, with the concurrence of the board of directors.

Changes.—If, in the discretion of the chief engineer and the board of direction, the location, or working survey of the line, is changed
468 or altered so as to increase any portion of the work, such increase

shall be estimated by the engineer aforesaid and allowed to the contractors in addition to the contracting price stipulated in this agreement.

Clearing and grubbing.—The width of the ground to be cleared of standing trees and brush shall be at least eighty feet, and in cases where the engineer considers a greater width necessary it shall be done.

From the surface of the grounds to be occupied by embankments, all trees, bushes, logs, and other perishable materials shall be removed or burned, and where the natural surface of the ground is less than two feet below the grade line, stumps and roots are to be grubbed up and removed, and where the natural surface of the ground is between two and six feet below the grade line, trees and stumps shall be cut off close to the ground.

469 Embankments.—The embankments will be made generally, unless ordered by the engineer, with a top width twelve feet, with side slopes; when of earth, of one and a half horizontally to one vertically, truly and evenly dressed. Side ditches shall be made when required by the engineer along the outer slopes of embankments, and the material obtained therefrom deposited in embankments or elsewhere as may be directed by him.

Besides the ditches and drains named above, ditches shall be made, when required by the engineer, leading to and from the works of drainage of the road; also, excavations for the making and turning of water courses and of roads, all of which shall be done strictly according to the instructions of said engineer.

In cases where the excavations of ordinary width are insufficient to form the contiguous embankments, the di*ffi*ciency shall be sup-
470 plied by widening the cuts in such manner as the engineer may direct, or, at his discretion, the material shall be obtained from grounds adjacent to the line of the road.

The berm' between the foot of the embankments and the sides of the ditch to be not less than three feet.

Excavations.—The excavations of the roadway shall have generally a width of grade ot not less than sixteen feet; but the width of the excavations as well as the inclinations of the slopes may be increased or diminished, at the discretion of the engineer, to suit the purposes of the construction or the nature of the material.

Timber foundations.—The beds shall be perfectly levelled & the timber of such dimensions as the plans will show, shall be well bedded at proper distances apart, and the intermediate spaces filled with such material as the engineer may select.

471 Culverts, drains, cattle guards, passes, shall have the beds dressed to a fair bearing surface, the joints neatly fitted, & the whole thoroughly banded.

Trestle work, which includes all wooden constructions which may be used as substitutes for embankments or for the abutments and piers of bridges, cattle guards, sluice drains, and road bridges, shall be of the kind and quality that the company have used and erected on the portion of the road from Mt. Vernon to Ashley, and according to the plans and directions which the engineer may give. Timber for the above may be taken from the lands of the company if found suitable, otherwise to be furnished by the parties of the second part.

Piling, if ordered by the engineer, is to be done by the parties of the second part in the following manner; they shall be properly banded
472 and pointed for driving, and shall be driven in such places, in such manner, & to such depths as may be required by the engineer.

They shall be of straight timber, not less than ten inches diameter at the small end.

All the timber of the trestle work, piling, &c., must be of sound, durable quality; the bark must be removed and the work performed in a skillful and workmanlike manner.

Ties, not less than twenty-four hundred to the mile, and more if required by the engineer, shall be furnished, not less than six inches face, six inches thick, and eight feet long; joint ties are to be of not less than ten-inch face and in sufficient number for the whole contract. Ties for switches and turnouts to be of suitable length, breadth, and thickness, or as may be ordered by the engineer. They are to be distributed in equal quantities, every one hundred feet, and piled by the side of
473 the road or track. They are to be of white oak, post oak, bur oak, or honey locust.

Preperations of ground for turnouts and switches shall be done as the engineer may direct, and is not to exceed fourteen, or sufficient for seven depots.

The parties of the first part, in and for the above-mentioned considerations, agree to pay to the parties of the second part the sum of ninety-four thousand dollars in lawful money, and thirty-one of the construction bonds of the company, of one thousand dollars each, payable in the following manner, to wit, the engineer shall, at the end of each month, make an estimate of the work performed by the parties of the second part, in ratios to the whole price paid by the party of the first part, for the performance of the contract, which amount shall be
474 paid to the parties of the second part, less fifteen per cent., which amount shall be retained by the party of the first part until the completion of said contract by the parties of the second part, at which time the whole amount thus retained shall be paid over to the parties of the second part as the last instalment due on said contract.

The party of the first part further agrees that the parties of the second part may, at any time or place, take from the lands of the company all necessary timber for the bridges, culverts, cattle-guards, ties, and all other wood-work embraced in their contract.

Given under our hands and seal the day and year above written.

I. T. VANDUZER,
EDWIN GULICK.
ALBERT H. HAGER.
N. A. SMITH,
For the Mt. V. R. R. Co.

In presence of—
IRA HERSEY.

Witness as to Albert H. Hager signature:
EDWIN GULICK.

475 *Deposition of J. W. Ward.*

And on this twenty-fifth day of November, 1859, came before me, JOSEPH W. WARD, of Boston, witness for the plaintiff, who, being by me examined, cautioned, and duly sworn to testify the whole truth, did depose and says:

Joseph W. Ward's deposition.

Int. 1. What is your name, age, and residence?

He says: Joseph W. Ward; age, fifty-five; residence, Boston, Massachusetts.

Interrogator' 2. Are you a party in the above-entitled suit?

He says: I am.

Interrogatory 3. Whether or not, at any time, you purchased any bonds of the Mount Vernon Railroad Company; if so, when, how many bonds, and whether or not there was any consideration paid by you for said bonds?

He says: I did. In or about *about* the year 1860, and before the
476 commencement of this action I purchased, in the regular course of business, a quantity of the bonds issued by the Mount Vernon Railroad Company as construction bonds. The whole amount of said bonds bought by me was thirty-eight thousand dollars. I bought them in market, and paid for them in cash a valuable consideration.

Int. 4. Have you or not, since, in any way, disposed of said bonds which you then bought?

He says: I have not. I have been the bona-fide owner and holder of them ever since said purchase, and the said bonds are the same that are referred to in this action as being held, owned, and represented by me.

JOSEPH W. WARD.

Deposition of John H. Brown.

And on the same day and at the same place, came JOHN H. BROWN, a witness for the plaintiff, before me, who, being by me examined, cautioned, and duly sworn to tell the whole truth, did depose and say:

John H. Brown's deposition.

Int. 1. What is your name, age, residence, and occupation?

He says: John H. Brown; age, forty-two; reside at Marble-
477 head, Massachusetts; a negotiator by occupation.

Int. 2. Whether or not, at any time, you purchased the construction bonds of the Mt. Vernon Railroad Company; and if so, where, and how many, and what consideration did you pay?

He says: About the year 1860, and before the commencement of this action, I purchased, in Boston, a number of the construction bonds issued by the Mount Vernon Railway Company, amounting, at their par, to fifteen thousand dollars; the same were purchased in the regular course of business, and I paid a valuable consideration in cash for them.

Inter. 3. Have you or not held said bonds ever since, and are you a party in this cause?

He says: I have held said at all times ever since said purchase, and am now the owner of them. I have understood that I have been made a party to this suit. I have employed counsel with that expectation to represent my interest in the above-entitled action.

JOHN H. BROWN.

And I further certify the depositions of the aforesaid witnesses,
478 Smith, Ward, and Brown, were by me reduced to writing, in the presence of said several witnesses, respect*fully*, and were afterward read over to the said witnesses, respectively, and by them signed, in my presence; and I hereby return all my doings.

Witness my hand and seal the day and year last above-mentioned.

CHA'S LEVI WOODBURY,

Commissioner Circuit Court U. S. District of Massachusetts.

(Indorsed:) Opened and filed, per agreement on file. Dec. 7th, 1869. J. A. Jones, cl'k.

479 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, & State of New York, ss:

Be it remembered that, on the 4th & 8th days of December, respectively, in the year of our Lord one thousand eight hundred and sixty-nine, I, Edward F. Stilwell, a notary public in & for the State of New York, & duly commissioned and sworn, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish*ed* the judicial courts of the United States," passed September 24th, 1789, and also the act of Congress authorizing notaries public to take depositions, passed July 29th, 1854, did call and cause to be and personally appear before me at my office, at No. 170 Broadway, in
480 the city of New York, in the southern district of New York, in the State aforesaid, Austin Myers and Morris J. Earl, to testify, and the truth to say, on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Ill., wherein John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, and Austin Myers are plaintiffs, and the Mount Vernon Railroad Company and the Board of Supervisors of Wayne County are defendants.

And the said Austin Myers, being about the age of fifty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Austin Myers, and he did thereupon depose, testify, and say as follows, viz:

Deposition of Austin Myers.

AUSTIN MYERS, of said city of New York, being duly sworn, says that he resides in the city of New York; that, in or about the
481 year 1860, he purchased a number of the construction bonds of the Mount Vernon Railroad Company, amounting, at par, to the sum of sixty-three thousand dollars; that the same were purchased and received in the regular course of his business; and that he, (EDWARD F. STILWELL, *notary public,*) paid therefor at that time a valuable consideration, to wit, cash. Sometime before said purchase, said bonds had been delivered to Norman A. Smith by Mr. Isaac Seymour, the trustee named in the mortgage given to secure said bonds on lands in Wayne County, Ill. I understood at the time, & believe, said bonds were delivered by said Seymour to said Smith by the special order or request of Judge Wilson, who was then the agent and counsel of Wayne County, with relation to said bonds, and the disposition thereof. Since the said purchase of said bonds, I have been and am now the owner thereof, and they are the same bonds referred to in the above-entitled action as being owned or represented by me.

AUSTIN MYERS.

Taken, sworn, & subscribed before me this 4th day of December, 1869
EDWARD F. STILWELL,
482 *Notary Public N. Y. City, & County, & State.*

The further examination herein adjourned to December, 8th inst., at 12 o'clock noon, at same place.

December 4th, 1869.

EDWARD F. STILWELL,
Notary Public.

Deposition of Morris J. Earle.

170 BROADWAY, N. Y. CITY,
December 8th, at 12 o'clock noon.

Examination of witnesses continued:

And the said MORRIS J. EARL, being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, & nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Morris J. Earl, & he did thereupon depose, testify, & say as follows, viz:

Morris J. Earl, being duly sworn, says that he resides at Pas'aic, New Jersey, and that he is of the age of fifty years & upwards; that, in or about the year 1860, he purchased a number of the construction bonds of the Mount Vernon Railroad Company, amounting, at par, to the sum of fifteen thousand dollars; that the same were purchased and
483 received in the regular course of his business; that the said bonds were received in exchange for some fifty-six lots of ground, or upwards, in or near the city of Brooklyn, which were of very great value, and that part of the said bonds, amounting to about nine thousand (EDWARD F. STILWELL, *Notary Public*,) & five hundred dollars, deponent now represents in this suit above entitled, and is the legal owner & holder thereof, and that the said bonds were received in entire good faith, and for a good and valuable consideration duly paid therefor; that Charles W. Lewis, the treasurer of said Mount Vernon Railroad Company, was engaged in the negotiation or exchange of said bonds for said property, as hereinbefore stated, with deponent.

MORRIS J. EARL.

Taken, sworn, & subscribed before me, this 8th day of December, 1869.

EDWARD F. STILWELL,
Notary Public N. Y. City, & County, & State.

The witness Ira Hearsey, named in the annexed affidavit, fail'd to appear for examination.

EDWARD F. STILWELL,
Notary Public.

484 *Certificate of Edward F. Stilwell.*

UNITED STATES OF AMERICA.
Southern District of New York,
City and County of New York, ss:

I, Edward F. Stilwell, a notary public in and for the State of New York, & duly commissioned & sworn, under & by virtue of the acts of Congress, entitled "An act for the more convenient taking of (EDWARD F. STILWELL, *Notary Public*,) affidavits & bail in civil causes depending in the courts of United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act

for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material & necessary in the cause in the caption of
485 the said deposition named, as proved to me by the affidavit of Austin Myers, hereto annexed; and that they and each of them reside at or near New York City, and more than one hundred miles distant from the place where the court at which the said cause will be tried is appointed by law to be held; & that, as appears by said affidavit, the defendant, the Board of Supervisors of Wayne County & the defendant, the Mount Vernon Railroad Company reside in or near said county, & that both said defendants are more than one hundred miles from the city of New York, where the said witnesses were examined, & that all the attorneys of said defendants reside either at Springfield or Fairfield, in the State of Illinois, & more than one hundred and fifty miles from New York City aforesaid, as proved to me by said affidavits. I further certify that, on the 4th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by Austin Myers, & on the
8th day of December, 1869, I was attended by Morris J. Earl, the
486 witnesses, who were of sound mind & lawful age, & the said several witnesses were by me first carefully examined & cautioned & sworn to testify the truth, the whole truth, and nothing but the truth; and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements; and after carefully reading the same to the said witnesses they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the United States circuit court for the southern district of Illinois, at Springfield, Illinois, the court for which the same were taken.

And I do further certify that I am not *corssel* nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have here'nto set my hand and seal this
487 17th day of December, in the year of our Lord one thousand eight hundred & sixty-nine, and of the independence of the United States the ninety-fourth.

[L. S.] EDWARD F. STILWELL,
Notary Public for New York City, County, & State.

(Indorsed:) Filed and opened in accordance with stipulation on file Dec. 28th, 1869. J. A. Jones, cl'k.

488 UNITED STATES OF AMERICA.
Fifth Circuit and District of Louisiana:

Be it remembered that, on the 29th day of June, in the year of our Lord 1870, I, D. Urban, an United States commissioner, duly appointed by the circuit court of the United States for the 5th circuit and district of Louisiana, to take affidavits and acknowledgements of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de bene esse, Charles Hodges, on behalf of complainants, in a certain suit depending in the circuit court of the United States in and for the southern district of Illinois, at the city of Springfield, in said district and State, wherein John W. Kennicott et al. are complainants, and the Board of Supervisors

of the County of Wayne et al. are defendants; and the said examination was taken by me de bene esse, because said witness Charles
489 Hodges resided at New Orleans, in the State of Louisiana, more than one hundred miles from the city of Springfield as aforesaid, the place where the court in which said suit is pending and to be tried was appointed by law to be held; and no notification was given to the said defendants of the time and place appointed for taking the said deposition to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants were not, nor did have any agent or attorney, within *an* one hundred miles from said place of caption on taking said deposition, to whom said notification could be given; and I therefore proceeded with said examination.

Deposition of Charles Hodges.

And the said CHARLES HODGES, witness as aforesaid, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am about forty-two years of age, and reside at Kenner, Jefferson Parish, Louisiana; my business is that of a planter. I know
490 William R. Hodges; is doing business in New Orleans, as merchant in cotton, &c., which business frequently called him to different parts of the country, and to Europe. On these occasions he has been in the habit for many years, before leaving on such journeys, of leaving such valuable papers as he may happen to have in his possession at the time in my hands for safe keeping till his return, and as his residence has generally been in the same house as mine during those years, such papers and securities have often been in my possession for a considerable period of time—on one or two occasions for over a year. On such occasions I have been in the habit of locking up such papers or securities in an ordinary tin box, and placing them in an armoir' or wardrobe in my bed-room. I have been in the habit of examining such papers & of knowing all particulars in regard to them, we frequently consulting together as to their value, &c., and have sometimes had a joint ownership in various securities so held. I have also held,
491 and still hold, a full power of attorney from said W. R. Hodges to manage and conduct all his business affairs during his absence. I know that W. R. Hodges had certain "construction bonds of The Mount Vernon Railroad Company of Illinois." He has frequently placed them in my possession, as before described, for safe keeping since the year 1860, and, on one occasion, viz, on or about the month of May, 1866, on his departure for Europe, he sold and transferred them to me for a valuable consideration, and I again resold & transferred them to him for a like consideration and interest on his return in 1869. The numbers and denominations of the said bonds were as follows: Fifty-seven bonds of the denomination of $500 00 each, & were numbered, respectively, 310, 311, 312, 313, 314, 315. 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 119, 126, 223, 233, 255, 244, 245, 246, 247, 235, 236, 237, 238, 239, 240, 241, 242, 249, 299, 350. That twenty-one of said
492 bonds were of the denomination of $1,000 00 each, and were numbered, respectively, 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600, and that all of said bonds were of the same series, and of either the denomination of $500 00 or $1,000 00, bearing interest at the rate of seven p'r centum per annum, payable semi-annually of the first of May & November in

each year, the total number of said bonds being seventy-eight, and their total nominal value, exclusive of the interest coupons attached, was $49,500 00. Each of said bonds had twenty-eight (28) coupons attached, beginning with number 3, which was dated 1st of May, 1860, and ending with No. 30, and dated 1st May, 1874; two coupons (Nos. 1 & 2) dated May 1st, 1869, November 1st, 1869, having been detached from each bond, and no more. On about the twenty-fifth day of January last (1870) the said W. R. Hodges, being about to make a journey to Texas, placed the whole of the before-mentioned bonds in my hands for safe-
493 keeping during his absence. However, three of said bonds of the denominations of $1,000 00, each one numbered, respectively, 228, 229, & 230; and also, one bond of the denomination of $500 00, numbered 299, which four bonds he did not hand to me with the rest. I placed the said bonds in an ordinary tin box, such as is used for keeping papers of value by bankers & others, said box being about eleven or twelve inches long & seven or eight inches wide, which box I locked and placed in an armoir' (or wardrobe) in my bed-room, at my residence, at Kenner, Jefferson Parish, Louisiana. Early on the morning of 17th March last past, (1870,) while the said bonds and coupons were so placed, and in my care, they were, together with the box in which they were placed, and the house, lately destroyed by an accidental fire. As soon after the fire as I could enter the ruins, viz, on the 17th or 18th of March, I made search there, and found the top, bottom, & sides of the same box in which the said bonds and coupons had been placed. Among the ruins that had been caused by the fire the parts of the box were sep-
494 erated, and the said bonds and coupons were burned to tinder. During the progress of the fire I made an effort to save the said box containing the bonds and coupons, but in the confusion was unable to find the key of the a'moir' in which it was placed. I then attempted to break it open, but it was so strong I was unable to do so. I also tried to remove it from the room, several others assisting, but the fire had gained so much, and was so furious, that we were driven back. The house was a large plantation residence of nearly 100 feet square, the lower story built of brick, and the upper one of cypress timber, with a very large shingle roof, and it was built about the year 1814, everything being very dry, so that in about half an hour after the fire was discovered the roof fell in, and in about an hour and a half the whole house was in ruins; the house had a gallery entirely round it, and the only entrance to the upper story was by a flight of steps, front and rear,
495 leading up from the garden. My room, where the said armoir' contained the said bonds was placed, the entrance being comparatively narrow, and the furniture large and heavy, it was impossible with the means at hand to rescue it from the flames.

CH'S HODGES.

Sworn to and subscribed before me this 29th June, 1870.

[L. S.]

D. URBAN,
U. S. Commissioner.

And I do further certify that the preceding deposition was reduced to writing by the witness, Charles Hodges, in my presence, and signed by the witness, Charles Hodges, in my presence, after due reading of the same, and that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

Witness my hand and official seal at New Orleans on the day and year first above written.

[L. S.]

D. URBAN,
U. S. Commissioner.

496 (Indorsed:) Filed July 2nd, 1870. J. A. Jones, cl'k.

(Indorsed:) Opened at request of compl'ts' sol. J. A. Jones, cl'k.

497 UNITED STATES OF AMERICA,
Fifth Circuit and District of Louisiana:

Be it remembered that, on the 29th day of June, in the year of our Lord 1870, I, D. Urban, an United States commissioner, duly appointed by the circuit court of the United States for the fifth circuit and district of Louisiana, to take affidavits and acknowledgements of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de bene esse, William R. Hodges, on behalf of complainants, in a certain suit depending in the circuit court of the United States in and for the southern district of Illinois, at the city of Springfield, in said district and State, wherein John W. Kennicott et al. are complainants, and the Board of Supervisors of the County of Wayne et al. are defendants; and the said examination was taken by me, de bene esse, because said
498 witness, William R. Hodges, resided at New Orleans, in the State of Louisiana, more than one hundred miles from the city of Springfield aforesaid, the place where the court in which said suit is pending and to be tried was appointed by law to be held, and no notification was given to the said defendants of the time and place appointed for taking the said deposition to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants were not, nor did have any agent or attorney within *an* one hundred miles from the place of caption on taking said deposition, to whom said notification could be given; and, I therefore proceeded with said examination.

Deposition of W'm R. Hodges.

WILLIAM R. HODGES, witness as aforesaid, being carefully examined, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says: I am about 44 years of age, and reside at Kenner, Jefferson Parish, Louisiana; my business is that of a
499 merchant. During the year 1860 & 1861, I did business in the city of New York as a merchant; during that time I became purchaser, for a valuable consideration, of "construction bonds" of the "Mount Vernon Railroad Company of Illinois," of the nominal value of forty-nine thousand five hundred dollars, (49,500 00,) and of detached interest warrants or coupons of like bonds, of the nominal value of twenty-seven thousand dollars, (27,000 00,) which bonds and detached coupons are the same claimed as mine in the bill of complaint in this suit; said bonds and coupons were acquired by me in good faith in the regular and due course of business in relation to such securities, for money, and have been so held by me since that time, except during an interval of between two and three years, I having made a sale of the said bonds and coupons in the year 1866, and repurchased them again in the year 1869; I have frequently been absent from my residence during the past ten years for several months at a time, and on these
500 occasions I have been in the habit, before leaving home, of placing such valuable papers as I might happen to have on hand at the time, in the hands of my brother (Mr. Charles Hodges) for safe keeping until my return, and have frequently so placed the said bonds in his hands for that purpose, and so received them back from him

again. On the last of these occasions, i. e., on or about the 25th day of January, 1870, I was about to make a journey to Texas, and I placed in his hands, for the aforesaid purpose, fifty-six (56) of the said bonds of the denomination of $500 00, and 18 (eighteen) of the denomination of $1,000 00, or a total of seventy-four (74) bonds of the nominal value of forty-six thousand dollars, (46,000 00;) three bonds of $1,000 00 each and one of 500 00 having been retained in my own possession; each and all of the aforesaid bonds had twenty-eight of the original interest warrants or coupons attached to them. The two first (numbered 1 & 2,
and dated, respectively, on the 1st Nov., 1859, and the 1st of May,
501 1860,) having been removed and no more. The bonds so placed in the hands of the said Charles Hodges by me were all of the same series, i. e., the "construction bonds" of the Mount Vernon Railroad Company of Illinois, and dated the 20th day of April, 1859, and due and payable May 1st, 1874, and numbered as follows: Fifty-six of the denomination of $500 00 each, numbered 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 244, 245, 246, 247, 235, 236, 237, 238, 239, 240, 241, 242, 249, 350, 119, 126, 233, 223, & 255, and eighteen of the denomination of $1,000 00 each, numbered, respectively, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600. The whole of the aforesaid bonds, each with the 28 coupons or interest warrants attached, were placed by the said Charles Hodges, in my presence, into a tin box,
which was locked and fastened by him, and also by him placed
502 within an armoir' or wardrobe in his bed-room, at his residence, at Kenner aforesaid, which armoir' was also locked and fastened by him. I had returned from Texas previous to the 17th of March last—the said Charles Hodges still having the aforesaid bonds in his possession—and, while still in his possession and care, I know that they were accidently burned and destroyed, together with the box that contained them and the armoir' in which they were placed, as well as the entire house, which was burned to the ground on the morning of March 17th, 1870. I was present at the fire, and, with others, made every effort to rescue the said bonds and other valuable items, but the armoir' was locked and the key could not be found, and as we had not the requisite implements at hand to break it open, and the fire being very furious, it had to be abandoned—the house was very large, built mostly of wood, and contained many valuable family relics, nearly all
of which were totally consumed, the fire being so rapid that but
503 few of the smaller articles were saved. After the fire, i. e., on the 17th & 18th of March, I assisted to make search among the ruins made by the fire, when we found the remains of the box, in which the bonds had been placed by Charles Hodges, and with it a mass of charred paper burned so much that all writing and printing was illegible, the box being in several pieces—the top separated from the sides & bottom by the heat of the fire.

W'M R. HODGES.

Sworn to and subscribed before me this 29th of June, 1870.
[L. S.] D. URBAN,
U. S. Commissioner.

And I do further certify that the preceding deposition was reduced to writing by the witness, William R. Hodges, in my presence, after due reading of the same, and *and* that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

504 Witness my hand and official seal at New Orleans, on the day and year first above written.

[L. S.] D. URBAN,
U. S. Commissioner

(Indorsed:) Filed July 2nd, 1870. J. R. Jones, cl'k.

(Indorsed:) Opened at the request of compl'ts' sol'c't's, July 4th, 1870. J. A. Jones, cl'k.

505 WILLIAM R. HODGES sworn.

Examination-in-chief by Mr. McClernard:

Hodges, W. R., ex.-direct.

Q. Mr. Hodges, let me ask you a question: Did you ever see that book before? (Pointing.)

A. Yes; I have seen it.

Q. Was it ever in your possession?

506 A. Yes.

Q. In whose possession when you got it?

Record-book obtained by him through Lewis.

A. I obtained it in New York, from the hands of the former secretary of the company, or the treasurer, I think, of the company, Mr. Lewis.

Q. Through him or not?

A. Not from him but through his instrumentality.

Q. Through Mr. Lewis' instrumentality?

A. Yes, sir.

Q. What relation did he bear to the company.

Lewis' character, treasurer or secretary.

A. He was secretary or treasurer; I forget. He was treasurer.

Mr. SCATES. The minutes show that.

Mr. KNAPP. Who did you get them from?

A. Don't know; some person to whom he introduced me; don't remember.

Q. (M. M.) Where?

A. In New York, in 1869.

Q. What time of the year?

A. Must have been in May or June.

Q. Brought to you?

A. At the office in Water street.

Book brought to witness at an office in Water s't by a person unknown.

Q. Your office?

A. No; in the office; don't remember whose office it was.

507 Q. Did you inquire for this book?

A. I did; probably two or three times?

Q. Never had seen it before, had you, at all?

A. Don't remember that I had, at all.

Q. Did you get it of Mr. Lewis?

A. Got it from the person I spoke of; don't remember his name; never have seen him since; don't know where he got it of his own knowledge.

Q. The way he got this book?

A. That is the way. I was interested in finding the records of the company; inquiring for them I discovered them. I discovered them in that way?

Q. Did you go to this particular place by Mr. Lewis' direction?

A. I did.

Q. There got this book?

A. Yes; don't know the person who brought it?

Q. Live there yourself, do you?

A. No; I don't reside in New York?

Q. In the same connection I will ask whether any one prompted you?

Witness acted by request of counsel.

A. It was at your request that I did so. That was the reason of my having looked for these things.

Q. He told you where to find them?

A. Yes.

Objection.

508 Mr. KNAPP. We object.

Reading from minutes.

Mr. SCATES. (Reading from the book, page 3, date of February 1st, 1860. A special meeting of the board of directors, at St. Nicholas Hotel, &c.) That is signed by Grant. Six or seven pages further on, (reading,) that was the organization of the board for another year. Page 10, at the bottom of it there is a date of 26th March. This is entered after and dated before this last one; March 26, 1860.

The COURT. May have been intended for '61.

Error in date, '60 should be '61.

Mr. SCATES. It was '61—a mistake—because the last up here is Dec. 60, making it for '61—evidently a mistake.

The COURT. Makes it '61.

Mr. SCATES. (Reading.) That is the last. These minutes are signed by Charles W. Lewis, the secretary.

Deposition of Mr. Hodges offered.

Gentlemen I offer this deposition by Mr. Hodges.

The COURT. You can have him examined orally if you prefer.

Mr. BROADWELL. It is all in the deposition there.

509 Mr. GOODWIN. We offer it to save time—mere formal matter. He wasn't here then.

Mr. KNAPP. We would like to ask him some questions.

The COURT. Cross-examine him if you wish; he has been sworn.

Cross-ex.

Cross-examination by Mr. Knapp:

How many bonds.

Q. During the year '60 and '61 you were doing business in the city of New York, as a merchant? How many different times did you acquire any construction bonds?

A. I acquired all I have at once.

Q. During what time?

At first $100.

A. I believe in '61. I believe in April, '61. I had something like one hundred thousand dollars, but I returned a portion of them and I had the numbers, stated there, remaining.

How obt.

Q. From whom obtained?

A. Partly from the secretary or treasurer, Mr. Lewis and Mr. Wilson.

Q. Judge Wilson?

A. Yes.

Q. All you got you got at the same time. Did you get them from these two different persons?

510 A. I got them from these persons; I suppose from the treasurer, but I made my negotiation with the two persons, both present.

Q. All you got you got at once?

A. Yes.
Q. Something like a hundred thousand dollars?
A. Originally—a portion of them returned. Part returned.
Q. Who to?
A. To the secretary—treasurer—Lewis.
Q. What do you mean, then, when you say that you became the purchaser of forty-eight thousand five hundred dollars?
A. I mean an original loan of something over a hundred thousand dollars, bonds.
Q. How much did you loan them?
A. I first loaned six thousand dollars upon the original loan, and a portion of the original bonds I returned and became purchaser of the balance. First loan, $6,000.
Q. Who did you pay the money to?
A. To the treasurer.
Q. Was the loan made to the Mount Vernon Railroad Company?
511 A. No; it was a transfer from some other person, the loan being originally taken by some other person. A transfer.
Q. Who did you loan the money to?
A. To the company; I believe so, *I believe so*, or it was to the treasurer individually, I don't know which.
Q. Do you know who made the bargain with you? Who money paid to.
A. It was made partially with the treasurer, partially by Wilson; both parties to it.
Q. You say you loaned at one time six thousand dollars. Who did you pay that to?
A. I paid it to the treasurer of the company, Mr. Lewis.
Q. Did you give him a check for it?
A. Don't remember.
Q. Do you remember where you paid him this money?
A. At my office in New York.
Q. Subsequent to that how many loans did you make?
A. I made a payment of seven thousand five hundred dollars. Subsequent payment, $7,000.
512 Q. Was that the second payment?
A. I can't tell you, I have made him so many payments; and several of them, I can't tell the order of them.
Q. What money did you pay—what sort of money?
A. It was United States money. Kind of money paid.
Q. No United States money I know of, unless coin.
A. I don't suppose coin. It was money.
Q. What sort of money?
A. I don't remember what sort.
The COURT. State whether current or uncurrent?
A. What I paid was current money, good money.
Q. Was that money ever paid back to you?
A. No, sir; never by anybody.
Q. That brings me to what was given. State to whom you made this loan; on whose account?
A. My own account.
Q. To whom?
A. I don't know, sir. It was paid by me to Mr. Lewis.

Bonds, when and how received; as security first.

Q. And you received these bonds at this time?
A. I did.
Q. As security?
A. Yes, sir.

513 Q. Didn't you become the owner of some after that?

A. I became owner upon his giving me a stock in it. That was a sale. I took them on my own account. They were in the first place deposited with me as a pledge, as a collateral.

Q. You first received them as collateral. Subsequently how did you acquire a title?

Next as stock by assignment.

A. By an assignment from the same party, Mr. Lewis.
Q. By a sale?

$48,500 bonds for which witness paid in gross $70,000.

A. Yes; I purchased them from him—forty-eight thousand and five hundred dollars.
Q. How much did you pay for them?
A. Can't tell you exactly. Can tell you in gross—about seventy thousand dollars.
Q. Forty-eight thousand dollars, (laughing.)
A. (Smiling.) I should like to have some of the money back.
Q. Certainly.

Coupons included.

A. I would say now that included coupons, however.
The COURT. You paid about par for them, including coupons?
A. Yes, sir.
Q. Have you all those bonds to-day?

514 A. Yes, sir, some of them; a portion of them are destroyed.

Q. How many of them have you to-day?

Only 4 bonds left. Balance destroyed.

A. I have only four, the balance destroyed.
Q. What denomination?
A. Three one thousand, one five hundred.
The COURT. You claim to recover for the destroyed bonds? Perhaps you had better examine him upon that evidence.
Q. To whom did you give—did you give those other bonds up?
A. I did not pay the seventy thousand dollars at the time. I gave a portion of them up. A portion of them were given up when the original purchase was paid by me. Then, afterwards, I acquired some coupons, which are in the calculation of seventy thousand dollars.
Q. Did you ever deliver any goods for bonds at all?
A. No, sir.
Q. How much interest was due when you bought those bonds?
A. I don't think any were over due when I bought them. No, I don't think there was anything over due.

515 Mr. SCATES. There were two coupons detached.

How much interest due when bought.

Q. Two years interest matured when he acquired them?
A. There were some coupons cut off.
Mr. BEECHER. They were delivered to you afterward.

Q. Mr. Hodges, you say you have only four thousand-dollar bonds; the balance ——

A. Three thousand five hundred. I think three one thousand and one five hundred.

Q. Did you hold them all the time?

A. No; not the whole time. I transferred my interest on leaving for Europe. I transferred them to my brother. Bonds transferred to brother.

Q. When was that?

A. In '66.

Q. How long were they transferred?

A. I remained abroad two years, and afterwards I took them back again.

Q. Did you sell them to your brother; did any consideration pass?

A. I indorsed them to him.

Q. Was there any consideration for that indorsement?

A. There was a general account between us, and I assigned them to him for any proceeds that might be got, to be credited to me. We had a large account together,
516 always involving a considerable amount of money.

Q. Nothing really paid to you by your brother?

A. No.

Q. They were delivered back by your brother to you?

A. Yes, sir; the identical bonds.

Q. What time was that? When.

A. That was in '68, or the early part of '69. In '68 or '9.

Q. You have been the owner ever since?

A. Yes, sir.

Q. That's all?

Mr. McCLERNARD. Mr. Hodges, one question: You say you received these bonds on account, and paid so much? Re-direct.

A. Yes, sir.

Q. And the result was that you had to take them, and then you paid the money on their bonds?

A. I paid further money upon them.

Q. In all, seventy thousand dollars for the bonds and coupons?

A. That is to say, about; in the amount ——

Q. The consideration amounted to, say seventy thousand dollars?

A. Yes; about.

Mr. BROADWELL. I will state, if the court please,
517 at the time of filing this bill we had the bonds in possession. The numbers were all inserted in the bill, and the bonds have been destroyed by fire since that time.

The destroyed bonds. Destroyed bonds.

I will first read the deposition of his brother in regard to the destruction of the bonds. Deposition of Cha's Hodges.

This witness is named Charles Hodges.

Mr. McCLERNARD. I had the numbers before the suit was brought to us, and the numbers of all these bonds are in the original bill.

Mr. KNAPP. Mr. Hodges suggests this fact, and makes himself party to this suit.

Mr. BROADWELL. Mr. Charles Hodges says (reads Charles Hodges' deposition) a discrepancy as to one of the numbers on the bonds was discovered in the description contained in the deposition which the court admitted might be a mere clerical error.

Variance in numbers.

Mr. BROADWELL. We have now the deposition of Mr. William R. Hodges himself.

The COURT. The same deposition mentioned before?

Mr. BROADWELL. No, sir; made since the destruction of the bonds.

Deposition of W. R. Hodges.

(Reads the deposition of William R. Hodges.)

518 The COURT. (Interrupting.) Compare the numbers and see whether they correspond with those mintioned in the original bill.

(They were compared.)

The COURT. Those are all right.

(The reading was concluded.)

Mr. BROADWELL. I would state that in the supplemental bill filed since the destruction of the bonds, we make one of the bonds an exhibit.

One of the bonds exhibited.

Mr. MCCLERNARD. Showing the kind of bonds destroyed. We have the ruins here of the tin box which contained the bonds which were destroyed.

Rob. Allen, notary.

Major ROBERT ALLEN, notary, sworn.

Examined by McClernard:

Parcel containing remains of destroyed bonds.

Q. Take that parcel and look at it, (handing the witness a package about 6 in. by 9 inches, and about 3 inches thick, carefully secured.) State if you know anything about it?

A. Yes, sir; I received it.

Q. Who endorsed it; you?

A. Mr. Hodges endorsed it in my presence.

Q. Did you mark it?

A. I witnessed it.

Q. Was it in that condition when you put your signature there?

519 A. Yes, sir; it appears to be in the same condition.

Q. When was it this took place; is the date there?

A. July 7, 1870.

The COURT. (To the defense.) Do you want to see it?

(The package was opened and the ruined tin box displayed.)

Mr. MCCLERNARD. While that is doing I would like to ask one question.

To Mr. Hodges. Do you recollect that?

(Pointing at something which the reporter did not see.)

A. Yes, sir; I do.

Q. That I put in that paper while you were here last July?

Mr. HODGES. Yes, sir.

The COURT. Those are the remains of the box?

Mr. HODGES. Yes, sir; the remains were brought without being disturbed, as much as possible.

(Here the box itself was opened and contents exhibited.)

Opening of the box.

Tin box contained in parcel opened.

The COURT. Evidently the remains of a box. (Smiling.)

Mr. MCCLERNARD. Mr. Hodges, is that the box; are these the remains of the box?

520 A. Yes, sir.

Q. And those are the remains of some of the bonds upon which you are suing in this case?

A. Yes, sir; some of the bonds.

The COURT. If bonds were in there they are totally destroyed.

Mr. BEECHER. The maker of that box can't get any certificate. (Laughter.)

Mr. MCCLERNARD. I will ask him, if the court please, if the bonds were in the same general series.

A. They were the same series of bonds.

The COURT. Let him state as to the numbers.

Q. I see there is a discrepancy in your brother's statement as to certain numbers, 328–'9–'30, described in the deposition as 228, &c.

A. These are the bonds referred to; I suppose that was a clerical error.

Q. Those are the bonds intended to be described?

Inspection of cinders.

Mr. KNAPP. (Rising.) Let me see those bonds a moment. (Moving to the box and taking one or two of the cinders to the light.)

Mr. BROADWELL. The five hundred dollar bond

521 was in our hands at the time.

Mr. KNAPP. (To Mr. Hodges.) Were there any other papers in this box besides these bonds.

A. Those bonds were not in my hands.

Mr. KNAPP. You are too literal. I meant——

A. I think only those bonds. I am not sure about that, however.

Cross-ex. of Mr. Hodges by Mr. Knapp.

Mr. KNAPP. You delivered these to your brother on going to Texas, I think you said. So you put them into this tin box?

A. Yes.

Mr. KNAPP. Did you deliver at the time any other papers besides the bonds?

A. Yes; I delivered him some other papers; I don't remember exactly what they were; as I said, I was in the habit of delivering him any papers I chanced to have in my possession at the time.

Mr. KNAPP. I think you said you thought there was nothing but the bonds in the box.

A. I think nothing but the bonds; I don't think any other papers were put into it but the bonds.

Mr. KNAPP. Were they wrapped up in a paper?

522 A. Yes, sir; they were tied together; had a papper wrapped, perhaps, and bound round it—rolled up in a paper.

Mr. KNAPP. Were you present at this fire?

A. I was.

Mr. KNAPP. This charred paper found by you when you discovered the box in the ruins?

A. No; I think it was found by my brother. I was present at the time, however.

Mr. KNAPP. These bonds—of course, not necessary to ask the question—never had been protested by a notary, or anything of that sort?

A. I don't quite understand what you mean.

(Mr. Knapp here called the attention of the court to a cinder in his hand.)

The COURT. No writing on these any more than those.

The word "protest."

Mr. KNAPP. On this very legibly, in print. On this charred paper, right here, is the word "protest." Then follows the letter "N."

The COURT. (Taking it & examining it.) Very
523 plain. That may have been an outside wrapper. The word is very plain. Do you see it or any of the rest? Possibly it may have been on the outside.

Exam. direct by Mr. McC.

Mr. MCCLERNARD. Well, about that: may we ask a question about that which will explain it?

(To Mr. Hodges.) State whether those remains there consist exclusively of the consumed bonds—destroyed bonds—or whether anything else was included in the remains; or, in other words, state to the court how these remains were collected.

Probable mixture of remains.

A. Where the box was found, sir, there was a heap of charred papers about it, in it, and under it, &c. There were a number of books in the same armoir' and safe in which this was placed. The paper was taken up promiscuously from about the box. If I remember rightly, there were found—it was surrounded by part of that rubbish like that. (Illustrating.)

524 Mr. KNAPP. Were these bonds ruled paper? You can see it very distinctly.

Mr. MCCLERNARD. You say the charred matter was collected. Was some of it put in a newspaper?

A. Yes, sir.

Mr. MCCLERNARD. The probability is that other matters were collected?

A. I remember that there were a number of different papers in the armoire at the same time—letters, deeds, and so on—all together in the same armoire, all destroyed at the same time; books also—numbers of books there.

Mr. M. The remains of which were also in the same place?

A. All in the same place.

Mr. M. So that the remains were displaced by books and other material—some of the ruins there? (Pointing to the box.)

A. Yes, sir.

Words "and we the undersigned."

Mr. KNAPP. In the same armoire? Here is a piece of paper here with names "and we the undersigned" upon it.

A. There were various papers, deeds, and documents of various descriptions—books and numbers of
525 papers, letters, &c., all in the same armoire.

Mr. MCCLERNARD. These remains—can you say whether they consist exclusively of what is destroyed, or whether in part of other matter?

A. They were taken up with those remains that were close to the box, remains of everything in the armoire.

Mr. BROADWELL. We will offer those bonds.

The 4 bonds not destroyed.

Mr. MCCLERNARD. Now, may it please your honor, we offer these four bonds in evidence.

Mr. KNAPP. We object to them without proof of execution.

Mr. STUART. They are collateral papers.

Mr. KNAPP. Not our bonds at all. We say we don't know anything about it; not our bonds. Of course, if they were we couldn't deny it.

The COURT. Do you wish to cross-examine?

Mr. KNAPP. No, sir.

Memorandum bales of cotton.

Mr. MCCLERNARD. There is a memorandum (pointing to a cinder) of so many bales of cotton.

(Mr. Hodges takes it and brings it to the light.)

526 Mr. SCATES. (Inspecting one of the four bonds.) These are all, to the best of my knowledge, the signatures of the persons. This is signed by Mr. Grant. Here is a coupon signed by Mr. Grant.

Mr. STUART. Here is one of them not sealed.

Mr. SCATES. There is the seal, there.

Mr. STUART. That's not a seal. That is General Washington. (Laughter.)

Mr. MCCLERNARD. (Exhibiting.) There's our coupons—detached coupons.

Detached coupons.

Mr. KNAPP. Same character as these others, I suppose. We don't care about seeing them. They have got to be filed.

Mr. FREEMAN. They ought to be filed.

Filing of bonds.

Mr. HAY. If the case comes to a decree.

The COURT. Our purpose is to file them, and direct the clerk to place them all on deposit. We have no safe here.

Let the understanding be that the parties shall be allowed the liberty of presenting the bonds, (the other side being present.) Put them in possession of the clerk, and he can deposit them.

The court took a recess until two o'clock.

527 UNITED STATES OF AMERICA,
Fifth Circuit and District of Louisiana:

Be it remembered that, on the twenty-fifth day of the year of our Lord 1870, I, D. Urban, a United States commissioner duly appointed by the circuit court of the United States for the 5' circuit and district of Louisiana to take affidavits and acknowledgments of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de benne esse, William R. Hodges, on behalf of complainants, in a certain suit depending in a circuit court of the United States, in and for the circuit and southern district of Illinois, holden at the city of Springfield, wherein Joseph W. Ward and others are complainants, and the County Supervisors of Wayne County and the Mount Vernon Railroad Company are defendants; and the said examination was taken by me de bene esse, because said William R. Hodges, witness, resided at Kenner, in the parish of Jef-

528 erson, State of Louisiana, more than one hundred miles from the city of Springfield, the place where the court in which said suit

is pending and to be tried was appointed by law to be held; and no notification was given to the said defendants of the time and place appointed for taking the said depositions, to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants were not, nor did have any agent or attorney, within *an* one hundred miles from said place of caption on taking said deposition, to whom said notification could be given; and I therefore proceeded with the said examination.

Deposition of W'm R. Hodges.

And the said witness, WILLIAM R. HODGES, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am about 44 years old, and reside at Kenner, in the parish of Jefferson, State of Louisiana. My business is that of a merchant.

529 During the years of 1860 and 1861 I did business in the city of New York as a merchant. During that time I became the purchaser, for a valuable consideration, of construction bonds of the Mount Vernon Railroad Company of Illinois, of the nominal value of forty-eight thousand five hundred dollars. Said bonds were acquired by me in the regular and due course of trade in relation to negotiable securities for money.

W. R. HODGES.

Sworn to and subscribed by me this 25th day of January, A. D. 1870.
[L. S.]

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the witness in my presence after due reading of the same, and that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

Witness my hand and official seal, at New Orleans, on the day and year first above written.

[L. S.]

D. URBAN,
U. S. Commissioner.

530 (Indorsed:) Filed and opened at request of Messrs. McClernand and Broadwell. Feb'y 10th 1870. J. A. Jones, cl'k.

531 *Notice.*

Circuit court of the United States for the southern district of Illnois.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne & Mt. Vernon Railroad Company. } Bill in chancery.

Mr. Charles A. Beecher, att'y for defendants:

Please to take notice that Samuel J. R. Wilson, of Wayne County, Illinois, is a witness whose testimony is necessary in this cause, and who resides in said county; that said Wilson will be examined on the part of the complainants in this cause before me, a notary public duly appointed by the State of Illinois for the county of Wayne, in the State of

Illinois, at my office, in the town of Fairfield, in said county of Wayne, in said southern district of Illinois, on the twenty-third day of August, A. D. 1869, at ten o'clock in the forenoon, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated Fairfield, the 23d day of August, A. D. 1869.

Yours, etc.,

532 [L. S] JAMES McCARTNEY,
Notary Public for Wayne County, Illinois.

I hereby accept and acknowledge service of copy of the above notice, and waive all objection to the length of time between the date of service and the time of taking said deposition.

Fairfield, August 23d, 1869.

C. A. BEECHER,
Attorney for Defendants.

533 *Copy of bond.*

UNITED STATES OF AMERICA.

STATE OF ILLINOIS.

The Mount Vernon Railroad Company.

No. 471.] [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer, one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest warrants hereto annexed, at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued, for the purpose of the construction and completion of the said railroad, and the

534 expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee of one hundred thousand acres of land, in the county of Wayne, in the State Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad; and also, by a mortgage to said Isaac Seymour as trustee of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest warrants to be signed by its secretary, and its corporate seal to be hereto affixed,

One thousand dollars.

at the office of the company, in the State of Illinois, this
[L. S.] twentieth day of April, one thousand eight hundred and fifty-nine.

L. CASEY, *President.*

NORMAN A. SMITH, *Treas.*

(In red ink across the face:) 1,000.

535 The foregoing is one of a series of bonds authorised and issued by the Mount Vernon Railroad Company in sums of $500 & $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors, passed the 1st day of March, A. D. 1859.

I. SEYMOUR,
Trustee.

Copy of coupon.

Copy of coupon.

(In red on face:) 26.

1872. The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 31st day of May, 1872, it being the interest to that date on bond No. 471 for one thousand dollars.

For the company:

A. N. GRANT,
Secretary.

26 additional & similar coupons on each bond.

535½ The mortgage of the Mt. Vernon Railroad Co. was foreclosed on default of answer, and mortgage property sold.

Defendants' side. *Defendants' side.—Swearing of the witnesses.*

Mr. FREEMAN. We would like to have our witnesses sworn.

(S. J. R. Wilson, R. P. Hanna, and Mr. Beecher were here all sworn together.)

S. J. R. WILSON.

Examination direct by Mr. Freeman:

Wilson, co. judge when. Q. Judge Wilson, will you tell whether you were county judge of Wayne County at any time, and what time?

A. I was, in the fall of 1859, I guess till '61—fall of '61.

Q. Well, as a preliminary to some other matters I want to examine you about, I will ask you: Do you recol-

536 lect a vote that was taken in Wayne County, in 1855, on the subject of swamp lands? County vote in 55.

A. Yes, sir; I recollect something about that.

Q. You were taking a prominent part in that canvass?

A. I was.

Q. Will you state to the court what was the character of the canvass and the pretences of those who were making it—the different pretences?

I propose (to the court) to show, if I can, that this vote was a part of a fraudulent scheme to wrest these lands from Wayne County; that there were two schemes used in the canvass, one was to run an east and west road, another was a north and south road, and the plan was to reconcile all the conflicting interests and get them all to support a general proposition. I propose to show by Judge Wilson. Object to show a fraud.

The COURT. Probably some testimony has been received that is not entirely legitimate.

Q. Judge Wilson, will you answer?

537 A. The fact is there was canvassed two roads, probably; the general canvass was however in favor of the Mt. Carmel, Fairfield and Belleville. It was understood at that time to be controlled by General Pickering. That was the understanding; I don't know whether it was so or not. But then there were some who advocated a north and south road. Two roads canvassed.

Q. Now I want to know, so far as you are aware, the general understanding in the county, whether the object was to decide by that vote whether the lands should be bestowed in relation to any particular road or merely to establish any general scheme to divert them from some other purpose. Was the vote a diversion.

Mr. MCCLERNARD. We object.

The COURT (after hearing pro & con,) You may go on with the evidence. Objection.

Q. What was the object; was the proposition merely to establish a general scheme or for any particular road? What was the purpose of that vote.

538 A. There was a difference in the county board the spring before: some wished to sell these lands and appropriate the proceeds to the schools and roads and bridges. This was got up, I think, *for* to prevent the county court from disposing of them. Schools vs. R. R.

Q. To settle?

Mr. GOODWIN. We make a general objection to that whole thing.

Q. The proposition was to establish a general policy?

A. That was my understanding at that time.

The COURT. Mere general evidence; it does not say whether the railroad shall run from one point to another; it leaves that all indefinite.

Q. Now, Judge Wilson, I will ask you in relation to the execution by yourself of a pretended deed of trust to one Seymour. You recollect that? Deed of trust.

A. Yes sir.

Q. Will you state where you signed your name? Where signed.

Mr. MCCLERNARD. I object to that, sir. Objection.

Mr. GOODWIN. Here is the record of the court,

539 which shows where he signed it. You can't attack that.

Mr. STEWART. That's an objection you can make to the court.

The COURT. Better let the witness state.

A. It was done at my house.

Q. State the circumstances.

A. The circumstances was about this: Governor Casey and Mr. Vorhies, Grant, I think, and Mr. Vanduser came over to Mount Vernon and brought the papers. I was living in Fairfield, I think, at that time. They came to my house and I looked at them and told them I didn't reckon we could do anything them; but if they requested it I would call a special term of court. They said no, they didn't care. Mr. Scott one of the associates accidentally came into town, or whether he was sent for I don't recollect. He was there to our meeting and everything was done at my house, and the signing of the papers was done there.

Meeting at witness' house.

Circumstances of signing.

Q. You did not attempt to hold court there.

What witness told the company at the time.

540 A. Not at all. I can state also what I told Mr. Casey, Voorhies &c.; that we could not do anything legal that way; that if they requested we would call the court together. They said they would be satisfied with this; that they could raise the money upon that to build the road. I said if they did we would do anything we could to secure the lands to them; if not we would take all the benefit we could.

Q. Norman Smith?

Smith not present.

A. Not present.

Q. Not present at the execution of that instrument?

A. Was'nt named.

Q. What relation did he bear?

A. I believe he was treasurer of the Mount Vernon Railroad Company.

Q. And one of the firm, Vanduser, Smith & Company?

A. Yes.

Order of co. court '59. Genuine?

Q. Here is what purports to be a copy of the order of the county court of Wayne; the copy dates back to the special term of 1859.

The COURT. Or when the deed was executed.

541 Q. Just look it over, if you please, and state whether any court was held at that time?

Objection.

Mr. MCCLERNARD. I object to that, sir. We have an authority on the point which ought to be conclusive.

Record made up when?

The COURT. Was such a record made at the time? And the circumstances?

A. At the time of signing there was not, I think; not to my knowledge.

The COURT. When was that made?

Don't recollect.

A. I could not tell, for I do not know; don't recollect.

The COURT. Appears to be a record of the county court.

Q. Do you know?

A. I looked at the record in Fairfield, on Friday last, I believe, at the date of filing.

Q. Recollect what that was?

A. Third day of May.

Q. That order purports to give the page of the record book?

Mr. McCLERNARD. We wish to be understood as objecting. Objection.

The COURT. Do you pretend there is no such record made?

Mr. HANNA. There is no proof showing ever to have been such a one.

542 The COURT. I will hear the evidence; I don't know what effect it may have.

Mr. McCLERNARD. They have no right to question the date.

Q. Now, on this day, the 20th of April, '59——

The COURT. He may state when the record was made up after the filing of this.

Q. Can you state whether this was made up prior to the third of May?

A. Well, I could not state from positive recollection; my recollection is, it was made probably after I had been to New York. Record probably made up when?

Q. When was that?

A. I can't recollect the date.

Q. After the mortgage was made?

A. Yes.

Q. Upon the execution of the deed of trust did you go to New York?

A. Yes, shortly afterwards; can't recollect how long.

Q. Did you take the deed with you?

A. I did'nt; I think Mr. Voorhies took it; that is my recollection.

Q. How soon after the execution was it?

A. I could not give anything definite about it; not long afterward.

543 Q. Within the month of April, probably? Can you say it was the 20th?

A. I don't believe I could tell.

Q. After May?

A. My recollection is, some time in May.

Q. This order was drawn up after your return? After witness' return from N. Y.

A. That is n y impression.

Q. You state positively, Judge, that the execution of the deed was at your house, and not in court?

A. Yes, sir; and the whole consultation about it was there.

Q. Mr. Smith was not there?

A. Not that I *seed* or heard of.

Q. As the meeting was at your house, you must have known it had he been there?

A. I would have known it.

Q. Now, Judge, when this order of court was made, who was present? Who present when record made up.

A. I don't recollect whether anybody was present but myself, and I don't recollect particularly, only what I see on the signatures.

Q. Mr. Smith says here, you had a power of attorney to act in their behalf in court matters? Power of attorney for Scott.

544 A. One of them; I think Mr. Scott.

Q. Did you act in that way in regard to this matter; the making up of this order?

A. I don't recollect particularly about that. The signature seems to be my handwrite.

Q. Both signatures?

A. Yes.

Q. Judge Scott's?

A. It looks that way; I looked Friday last; hav'nt any particular recollection of it.

Director of the company, when?

Q. Now I want to ask you in another branch of the case: At what time was you a director of the Mount Vernon Railroad Company?

A. I expect it was near '59.

Connection with Belleville &c. co-

Q. Well, state to the court what efforts were made by yourself, or by your direction and knowledge, under the incorporation of the Mount Vernon Railroad Company, to procure some sort of arrangement with the Belleville and Fairfield Company, or those who pretended to own the charter? State all in relation to that.

545 A. Well we tried, or I was requested and employed to try, an' negotiate a contract with Gen. Pickering.

Q. What sort of a contract? Why with him?

A. Because he was understood to control all the charter there was east of Mount Vernon at that time.

Q. State what efforts were made, and how successful they were.

A. I went to see General Pickering once or twice myself; could not effect anything, and then we undertook to get through the legislature—I believe it was '58 and '9—the extension of the Mount Vernon Railroad all the way through Wayne Co.

Q. Will you tell us (so that we can get them in chronological order) what efforts were made with Pickering to get a connection from him? Did you make any efforts?

Offers to Pickering.

A. I did. I made some offers. Company made some offers to General Pickering—the county.

Q. In behalf of the Mount Vernon Railroad Company?

A. Yes, sir.

In '59.

546 Q. That was in '59?

A. It was.

Q. Did Governor Casey consent?

A. Yes, sir; it was by his advice. Governor Casey was then president of the board, if I recollect.

Company's understanding.

Q. What was the understanding of the Mount Vernon Railroad Company—you being one of the directors—as to whether they had any arrangement?

Objection.

Mr. McClernard. I object to his understanding.

The Court. He may state whether he knows of any consultation between that and any other company.

Q. Why were you employed with the company to go and negotiate?

No charter beyond M't Vernon.

A. Because the company said they had no charter going east of Mount Vernon.

Q. In what manner were you employed? Was there a meeting of the directors or anything of that kind, or was

it merely a request of Governor Casey, as president,
547 and others?

A. I think it was merely at the request of those in authority to go there. Don't recollect a particular meeting to that effect.

Q. Did Governor Casey and the other directors consent?

A. Yes, sir.

Q. Did you understand, prior to that, that you had any arrangement?

Mr. McCLERNARD. We object to "understanding.'

Q. Did you know of any?

A. There was not, to my knowledge.

Q. And you acted upon this state of things?

A. Yes, sir.

Q. Was you successful?

A. Not at that time.

Q. At any time?

A. I was, along with Mr. Lewis and Mr. Davis; we went over at one time to buy Mr. Pickering's franchise, and they made a contract with Mr. Pickering, for his franchise of a road.

Q. Who were with you?

548 A. Mr. Lewis—Charles W. Lewis and Charles Davis. Mr. Lewis was then, I believe, acting as treasurer of the company and director.

Q. That was a conditional contract?

A. Yes, sir; it was.

Q. Ever carried out?

A. I think not. When the time for the payment of the money came, we went to try to get an extension from General Pickering, and General Pickering would not hear to anything of the kind; he would not give me another hour. The Pickering contract.

Q. In 1859—at that time you knew of no arrangement between the Mount Vernon Railroad Company and any company east?

A. I knew of none.

Q. And you acted in behalf of the company at the instance of the directors and Governor Casey?

A. Yes, sir.

Q. What did you put in that contract? Contents of contract.

Mr. GOODWIN. The contract speaks for itself; an
549 objection is made. It is not important; it is here. Objection.

The COURT. Was it in writing?

A. I think it was.

Mr. SCATES. This is the one they objected to my reading. I was willing to put everything—all the res gestæ—before the court. It is down at the hotel now. I can get it.

The COURT. Of course the witness need state nothing about it. It may be considered as in evidence.

Q. State whether there was any discussion among the directors of the Mount Vernon Railroad Company about that time as to the necessity of getting some connection. Discussion in the board.

A. Yes, sir; there was.

Q. Let me ask whether the directors stated that they had none.

A. The directors stated, and it was understood by all, that they had none.

Q. Were you one of the directors?

The COURT. He has already said there was none according to his knowledge I suppose that's all.

Q. We want to prove, by parol, whether there was any connection.

550 The COURT. Go on.

Who else employed?

Q. Judge, do you know whether any other person was employed by the Mount Vernon Railroad Company to assist in getting a connection here?

Hanna.

A. My recollection is, that Mr. Hanna was employed also.

Q. Have you any personal knowledge of his efforts and the results?

A. I don't think I was ever with him there.

Q. That was the object?

A. That was probably the direction of the company.

Q. Judge Wilson, there is a contract in evidence here, purporting to have been made between somebody in Wayne County and Vanduser, Smith and Company, to build a road through Wayne County. Can you recollect that?

Vanduser, Smith & Co. contract.

A. Yes, sir.

Mr. GOODWIN. Don't the contract show?

Q. I want to show some other things; that there was no connection here.

551 The COURT. Let him answer, whether they had any connection established at the time.

A. They had none that I knew of.

Q. Tried to get one through the legislature? I wish to show that they tried, but failed.

Mr. MCCLERNARD. We make objection.

The COURT. State (to the witness.)

A. They got me——

The COURT. Did you apply and succeed?

A. We did apply, but didn't succeed.

The COURT. That's all.

Q. Governor Casey joined in that effort; that was some time as late as 1859?

A. Yes, sir.

Q. I want to ask you whether you ever withdrew any bonds—Mount Vernon Railroad bonds—from the possession of this man, Seymour?

A. I never withdrew one.

Q. Did they probably give Mr. Lewis liberty? What was he—what relation?

A. Treasurer of the company at that time.

In whose employ?

Q. Whose agent were you?

552 The company's.

I was in the employ of the railroad company; they paid me all the pay I got.

Q. State where Fairfield is; how far from the east line of Wayne County?

Fairfield; its location.

A. About 12 miles east of the line of Wayne County.

Q. Fairfield lies east of Mount Vernon?

A. East; yes, sir.

The COURT. You might just say how far from Mount Vernon to Fairfield.

A. That is some thirty-five miles, I think, from Mount Vernon to Fairfield.

Mr. BEECHER. About thirty-four miles—eleven miles from the east or 12 from the west side.

Cross-examined by Mr. Scates: Cross-ex.

Q. Did you not act generally, as the agent of the county, through all these transactions? Whose agent?

A. Well, I was employed *wunst* by the county to go to New York to put bonds into the hands of Mr. Seymour. The county's.

Q. Put them into the hands of Mr. Seymour—

553 whose hands were they in?

A. Mr. Smith's and Mr. Hearsy's.

Q. You went under what employment?

A. County court.

Q. When was that?

A. Well, sir; I couldn't come at the dates.

The COURT. 1859, I suppose?

A. I think so.

Mr. BEECHER. There is an order of that kind—November, '59.

A. I could not speak from recollection.

Q. What was the object of the order; to change the custody of the bonds? To change custody of bonds.

A. Yes, sir.

Q. What bonds?

A. Bonds of the Mount Vernon Railroad Company.

Q. Well, but there were two sets of bonds—two custodians of bonds?

The COURT. Five hundred—

Mr. MCCLERNARD. Some of them Wayne County exclusively.

Mr. GOODWIN. For Wayne County made a contract to put the bonds into Hearsy's hands.

Mr. FREEMAN. This is subject to our general objection. Objection.

Bonds in whose hands.

554 Q. Didn't the county court order that you refer to, refer to bonds in Hearsy's hands?

A. I don't recollect.

Q. Was not that the arrangement?

A. It was the arrangement.

Q. Did you make the change?

A. Yes, sir.

Q. Well, state if you did not afterwards put the bonds into Mr. Lewis' hands?

A. Some good while afterwards; yes, sir; I was called there by the company.

Q. By the company; these were the county bonds. I am asking you what you did for the county?

A. Didn't do anything with the county bonds.

Q. What has become of the county four hundred thousand?

A. I don't know.

Q. Did you ever dispose of any?

A. No, sir.

Q. Didn't you give Lewis an order to dispose of some of them? Order to Lewis.

A. Gave him an order to get them away from Seymour.

555 Q. Has Lewis to issue them to Mr. Davis and others?

A. No, sir; no recollection——

Q. Did you ever have any connection, or assist, with Lewis to dispose of the bonds?

A. No, sir.

Q. Never interested for the disposal of the bonds?

A. No, sir.

Letter from witness. Q. Did you ever write a letter stating the bonds might be disposed of if you approved it?

A Don't recollect such a letter.

Q. Would you recollect it if there was such a letter?

A. I might; a great many letters passed between us; but I don't recollect that particular letter.

Q. If you gave an order to Lewis to deliver bonds over to Davis for the purpose of raising money, what was the object?

A. It was for the railroad company, I reckon; don't recollect any such order.

Sale of bonds. Q. Did you ever dispose of the bonds yourself?

556 A. Never disposed of a single bond.

Q. Did you ever assign any?

A. Not that I have any recollection of.

Q. Have you any knowledge that any one of them was ever disposed of?

A. I have never seen one of them disposed of.

Q. Well, do you know that none *was* disposed of?

A. I can't recollect; can't recollect the buyers?

Q. Did you encourage them to buy?

A. Don't recollect that I did.

Q. Did you think the bonds good?

A. We intended to give the lands if the road was built.

Hit it if a deer; miss it if a calf. Q. You intended to hit it if it was a deer, and if it was a calf, miss it?

A. Expect that was a good deal our feeling.

Q. Bonds good if the road was built. Did you ever tell a purchaser that fact; ever encourage one buy?

A. Don't recollect anything about it; don't recollect any person that I encouraged.

Direction to Lewis. Q. Didn't you direct Mr. Lewis to retain the bonds,

557 and recover his own claims against the company.

A. No recollection of any such thing.

Q. Did you never direct Mr. Lewis to give bonds to Davis to be disposed of in order to purchase or procure the charter of the Belleville and Fairfield Railroad.

A. No, sir.

Q. No recollection of any of these things?

A. No, sir.

Q. Wouldn't you recollect——

A. It being so long ago—might have been.

Witness' opinion of bonds. Q. Have you always been in this belief—that the bonds are void.

A. I have.

Q. From the beginning?

A. Yes, sir; from the commencement.

Q. Have you always dissembled to parties negotiating?

A. I don't know that I ever did.

Q. Wasn't you present with the board at the time the contract was made for iron? The iron contract.

A. I was there.

Q. Wasn't all that with your consent?

A. Don't know that I took any part.

558 Q. Wasn't the contract presented by the board for approval?

A. Not to my recollection.

Q. Were you in New York and met with the board.

A. I was, I believe.

Q. Didn't you go there in January, '60, to change the custody of these bonds? Jan'y, '60.

A. Some time in '60; some time in the winter; couldn't say; January or February.

Q. Didn't you preside at the meeting of the directors in January, '60?

A. Might have been such a thing; have some recollection of being at a meeting of the board in New York City; don't recollect presiding.

Q. When that contract was presented, while you were sitting as president, was it unanimously approved.

A. Don't recollect.

Q. Were you present when they negotiated with Mr. Morrison to borrow money to provide funds to pay for the contract for iron?

A. I don't know of any negotiation with Mr. Morrison.

559 Q. Reported to the board and approved?

A. I didn't so understand, nor don't so recollect, that the board had anything to do with the borrowing of money from Mr. Morrison. Money borrowed from Morrison.

Q. Did the board have anything to do with approving it?

A. Don't think they did. Mr. Crippin and Mr. Kendrick done that.

Q. I admit they were the executive committee; but didn't they report their contracts?

A. Not that I have any recollection; might have been, sir.

Q. You say you never had any connection or interest with Lewis in any of these bonds; nor the sale of any? Interest in sale of bonds.

A. No, sir.

Q. Now you undertake to say you made your signature to the contract, the mortgage, and deed of trust, as an individual, at your house, a mile away from Fairfield? Deeds—how signed.

560 A. I didn't say a mile away from Fairfield. I say it is probably between thirty and fifty rods from the court-house. I expect it was in the town plat; I think it was.

Q. How did you come to make an order as a court, stating the fact that you made it as a court in court? Order o court.

A. I don't have any recollection.

Q. It don't matter. The record don't forget. Suppose there is such a record, how does it occur?

A. The record, I suppose, is right.

Q. That has not been changed?

A. No, sir.

New York record book.

Q. Now, let me ask you if you ever saw the order book of the company, that the company kept of its doings—the board of directors in New York?

A. I may have *saw* it; but, then, I have now no recollection. I expect I have. I wouldn't know the book.

Q. Suppose I read you some orders that were made there, and ask you if you recollect them?

561 (The counsel read from date Feb. first.)

A. Recollect being there with them parties. Yes, sir.

Q. S. J. R. Wilson, president pro tem.?

A. Well, I don't recollect all that. I suppose is so.

Q. N. Smith presented a contract made at Albany, Jan. 6th, 1860, with the executive committee, by Jameson, &c., &c., ratified and approved?

A. The record is true. I don't have any recollection. I don't recollect of being in the board then.

Q. Did you not state that you went, under an order, as the county's agent?

A. Yes, sir.

Q. Then it was the forepart of '61, not '60?

Mr. BEECHER. It must have been.

A. Yes, sir; I was there in '61.

Q. The contract was made, and Smith was appointed a committee to draft said contract, (reading from the record book of the New York direction,) that is, at this

562 same meeting when you presided. At an adjourned meeting, February the second, the contract with Messrs. Kendrick and Crippin was presented, & (reading) ordered the seal of the company attached. Adjourned to Feb. 3d. You still presided. Do you recollect it?

A. I have a recollection of being there, but do not recollect presiding.

Q. Did you sign the contract—sealed order?

A. Don't recollect; might have done it. They did a great deal there in the board that I knew nothing about.

Q. The book reads: "Pursuant to adjournment, &c., S. J. R. Wilson in the chair," &c., (reading concerning order to give bonds to a bank in Georgia for $29,000 for currency to be used in the iron contract; also, the appointment of an executive committee, &c.) Do you recollect all these? Do you recollect of going there to make that contract?

563 A. I didn't take much action in the matter. Probably my name was nominally there.

Q. Were you there?

A. I was there.

Q. Any memorandum of any negotiation?

A. No memorandum of any negotiation. I was present, but I took no part in it to amount to anything.

Order to Lewis.

Mr. MCCLERNARD. I believe you stated you never gave any order to Mr. Lewis?

A. Not of my recollection now. I said, "If there is such an order, I gave it," but I have no recollection of it now.

Thomas L. and Dorrence Davis.

Q. Do you know Thomas L. Davis?

A. I can't recollect now.
Q. Know Dorrence Davis?
A. Yes. sir.
Q. Don't Thomas L. Davis live in Syracuse?
Mr. GOODWIN. Thomas T. Davis, not L.
A. I can't recollect now. I know Dorrence Davis.
Q. What relation is one to the other?
564 A. Don t know.
Q. Did you ever act with Dorrence?
A. He was in the company's office, and, I believe, he claimed merely to be agent to negotiate bonds.
Q. Ever act with him as director?
A. I don't know. I believe Mr. Davis was elected director, but I have now no recollection, and I may have done so.
Q. Did you know Jameson, of Mansfield, Ohio? Iron Co. firm.
A. Yes, sir.
Q. Never meet with him?
A. Once.
Q. Elliott?
A. Yes, once.
Q. Morrison?
A. Yes, sir.
Q. Crippin?
A. Yes, sir.
Q. These their handwriting?
A. Can't say.
Q. Do you know that's the contract that was brought in for approval at the time, and which I have read here?
A. Well, sir, I could not say as to that; never read it.
565 Q. You may read it.
A. I could not say that's any of their signatures.
Q. Didn't they make but one? They did make one?
A. I gave to our judges a copy of all the contracts I knew anything about. Iron contract.
Q. I have got hold of the original since. You gave a copy of it, and you said you took it from the original at the time?
A. I expect I did; I guess so.
Q. Well, it is a copy of this?
A. But I don't know anything about them signatures; don't know that I ever saw one of the men sign *their* name. His own signature.
Q. Judge, do you know that to be your handwrite?
(The counsel here showed the witness a paper upon which, at the suggestion of his associate, Mr. Goodwin, the reporter placed in pencil the mark "(1)"
A. I guess it is.
Q. Look at the paper attached as a copy to Grant's deposition.
566 A. Let me look at the paper first. Well, sir, it looks like my handwriting. It is very similar. It looks like it.
Q. Is that—another attachment to the same on which the reporter, in the same manner, placed the mark ("21.")—is that yours?
A. Yes, sir.

Lewis' handwriting.

Q. Is that Lewis' handwriting—Grant's deposition 3d day of November, 1870, dated?

A. Don't know.

A. M. Grant present at execution of deed of trust.

Q. Was Angus M. Grant present at that time?

A. My recollection is, he was.

Q. I am speaking of the execution of this deed of trust, &c.

A. I think Grant was there at Fairfield.

Q. Do you undertake to say N. Smith was not there?

A. I do.

Q. Did you take note?

A. I said that here.

Q. The 20th day of April, '59, (reading,) now this day the court executed to Isaac Seymour, of the city of New
567 York, a deed or trust recorded on book "B," page 330–341, and a deed of trust recorded on B B, page 341 in '59. Was that the same day you executed that mortgage?

A. I can't speak from recollection. I expect it is, though I can't speak certainly.

Q. December term, '59. The court order. A request of the board of directors of the Mount Vernon Railroad Company to the county court of Wayne County to withdraw $400,000 bonds of the Mount Vernon Railroad Company now in the hands of Hearsy. It is ordered that the above-named bonds be withdrawn from Hearsy's hands, and be withheld until such person, &c., shall be agreed upon by such Hearsy and the county court. Do you pretend to say you did'nt get any bonds from him?

A. I did'nt say that.

Q. Said you got them from Mr. Seymour?

A. I misunderstood.

Change of custody of bonds.

568 Q. Now, say it again. You were in New York under that order to change the custody for the county, as the county's agent.

A. I did it.

Q. Now where did you get the bonds?

A. I think I got them out of the safe that was in the office that was marked Mount Vernon Railroad Company, but I don't know who controlled the safe.

Q. Did'nt go there and bore into the safe? Who was there?

A. Smith.

Q. Do you know what relation he bore to the company?

A. I think Mr. Smith was treasurer. Hearsy was probably a member of the board.

Q. Then do you pretend to say that you don't know from whom you received the bonds?

A. Don't know; Mr. Smith or Mr. Hearsy.

Q. Did you send authority of the county court?

A. Now, I don't know but Mr. Hearsy carried them himself to Mr. Seymour. Don't know that I ever
569 touched them; don't recollect that I did.

Q. Then what became of them?

A. Never saw them any more.

Q. Where did Mr. Hearsy get them?

A. Well, sir, I can't answer that question.
Q. Did you know how he came by them?
A. No, sir.
Q. Don't recollect the mode by which you obtained them? Bonds, how changed.
A. The mode?
Q. Don't recollect any man's having them?
A. I think I recollect.
Q. I suppose you know how they came into his hands?
A. Yes, since you have named that.
Q. You had quite forgotten?
A. I hadn't forgotten. Mr. Smith brought the whole of them, all together.
Q. How do you know?
A. I saw them.
Q. I thought you didn't know who took them out of the safe?
A. I don't recollect when they went out. I don't
570 recollect having them in my hands at all.
Q. Didn't you put them into Mr. Lewis' hands?
A. I gave him the order to Mr. Seymour.
Q. Did'nt you take his receipt for them—Mr. Lewis'?
A. Don't recollect.
Q. Did'nt you give Mr. Lewis your receipt?
A. If I did I suppose there is such a receipt on file.
Q. Have no recollection of all this?
A. Don't have any recollection.
Q. No recollection of giving Mr. Lewis an order to dispose of bonds?
A. No, sir; I do not.
Q. Any recollection of any interest or proportion in the bonds?
A. No, sir.
Q. Or being intrusted in any division of the proceeds of the sale of bonds?
A. No, sir.
Q. Never had?
A. Never did with Mr. Lewis. The agreement between me and Mr. Lewis in '61, was that the bonds *was*
571 out, and if he could take up some more of them and make anything off of them, I was to have some share in that.
Q. What share?
A. I don't recollect; I have an instrument of writing to that effect.
Q. Produce it.
A. Can't, short of going home.
Q. Bonds yours & Lewis' or county bonds?
A. The bonds, I understood Mr. Lewis, to be out in somebody else's hands, and that he was going to try to get them to———; don't recollect the particulars of that exactly; but my recollection was that Mr. Lewis had bonds in his hands; that would be the best of my recollection.
Q. You were to have a share of anything that could be made?
A. Yes, sir.

Whose bonds.

Q. When they were redeemed they belonged to the company or the county?

A. Don't know; about all out, so far as I knew.

Q. About all gone; could'nt have all got out without your knowing; when were they about all out?

572 A. That time was in '61; went there in '61.

Q. What time '61?

A. I can only tell about the time I left New York; I think

Left N. Y. when. I left New York about the first days of May, or—

Q. Previous to that?

A. Yes; I recollect getting home about the 4th.

Re-direct. Re-direct by Mr. Freeman:

Q. I find an entry of the county court of Wayne County, December term, 1859, there in regard to the custody of the bonds in New York; to change the custody of the bonds;

Specific agency for county. it was as the agent of Wayne County, was it not, for that specific purpose, you went there?

A. Yes, sir.

Q. When you had consum'ated that, did your agency cease?

A. Yes, sir.

Q. Anything else you may have done you were acting for the Mount Vernon Railroad Company?

573 A. I went there at different times for the Mount Vernon Railroad Company after that.

Q. Anything further?

A. It was not for Wayne County; never did anything else besides this specific thing; that was all I was ever authorized to do for the county.

Mr. McCLERNARD. I want him to specify the other matters.

A. That was all for the Railroad Company.

Q. Not for Wayne County, at all?

A. No.

Re-cross-ex. Re-cross-examination by Mr. McClernard.

Q. Did'nt you name Charles Lewis, Dorrence Davis, and Ira Hearsy, all living in New York City?

A. I heard of their being there.

Q. Smith?

A. Smith lived in Troy, New York.

Q. With an office in New York? Hearsy?

A. Hearsy lived at Dobbs' Ferry.

Q. All these men transacted their business in the office of the railroad there, in the city of New York?

574 A. They had an office in the city of New York.

Different agencies of the company. Q. What agency of the Mount Vernon Railroad Company had they for you in the city of New York; how many of these other persons boarded or lived there?

A. They told me at different times; don't recollect the particular agencies.

Q. Do you recollect one single transaction as an agent there? I know (to the court) he was director.

A. I was requested to go there in '60, when they made their iron contract.

Q. Yes, I know; as a director; but I am speaking of an agency outside of your action in the board; did you ever transact any agency?

A. Don't know that I did.

Re-direct again by Mr. Freeman:

3d direct.

Q. Just one question: What I want to have understood for you, Judge, is that you didn't act as agent for the county, except for the specific thing named in this order.

The specific agency.

A. That one thing.

575 Q. You were an officer of the Mount Vernon Company in the other things—president of the board at their request. [The witness assented.]

Third cross-examination.

Third cross-ex.

By Mr. Scates:

Q. Didn't you continue to be presiding judge of the Wayne County court from the year '57 till '61?

Presiding judge of county court.

[The reporter understood the witness to assent.]

R. P. HANNA.

Hanna, R. P.

Examined by Mr. Freeman:

Q. Mr. Hanna, will you state, whether at any time you were the agent or attorney of the Mount Vernon Railroad Company?

A. I cannot be very definite with regard to dates. I acted as attorney for Vandsuer, Smith & Company a portion of the time, and only a portion.

Attorney for Vand. Sm. & Co.

Q. That was as late as, probably, what year?

A. Up to the date of this deed. I objected to have anything to do with this deed.

576 Q. Well, now will you state to the court the efforts you made in behalf of the company to get control or connection with these lines east there—east of Mount Vernon?

Efforts to get connection east.

A. Some time in the summer of '59, I reckon, I received word from some of them, couldn't say now who, to go to Mount Vernon: Some one sent a carriage over after me.

Mr. GOODWIN. This is all objected to.

Objection.

A. We had a consultation about getting a charter east from Mount Vernon. They directed me then to go to Albion and see General Pickering, who, it was supposed, had control of the Belleville charter. I didn't know any person of the company except Governor Casey, and I had but little to do with him at that time. Vanduser, Smith and Company employed me. They directed me to go first & see General Pickering. I didn't go directly; I went to first. I reckon I was there a week or two. Then I came back and went to see General Pickering about the charter. I stayed at Albion, perhaps one day. Then I went

577 down to Grayville.

Mr. MCCLERNARD. Vanduser, Smith & Company?

A. Don't know who the directors of the company were; Governor Casey was one of the members, to my personal knowledge. Then I came back to Albion & saw General

Pickering again. The result was, he wouldn't have anything to do with it.

Q. What did Governor Casey say to you?

Mr. GOODWIN. We have Governor Casey's conversation on record.

The COURT. He may state what directions he received—what to do.

A. They told me I might make Governor Pickering an offer of ten thousand dollars for his charter—to form some kind of a consolidation with his charter through Wayne County.

Q. Specify what it was.

A. Including the Albany and M't Carmel. I don't know whether it was a consolidation or what it was, but at that time he had control of the men. Whether he had a consolidation so as to have the legal control, or merely
578 had some of the men under his influence, I don't remember. At least, I was sent there from the Mount Vernon Railroad Company to make a connection.

Q. Governor Casey was president of the company?

A. I understood so at the time. Don't know anything about it. Didn't meet with the board of directors. It was my understanding at the time.

Q. You were to make the purchase if you could?

A. Went to Pickering, and went back afterwards to see Casey and talk the matter over.

What time?

Q. Was that as late as the year '59?

A. I think it was. It was while Vanduser, Smith and Company had charge. Parties came over and employed me, and I continued to act until the making of this deed of trust. I objected to anything of that kind.

No previous connection.

Q. Did you know of any intersection or consolidation between the Mount Vernon Railroad and Belleville and Fairfield?

579 A. Don't know, of myself. The thing might have been without my knowing it. I afterwards went back aft'r I had been to Albion; may be some weeks, and may be months; it occurs to me, at the term of the court following—probably the court following. We there talked about another plan of getting the charter.

Q. For what purpose?

A. To go on from Mount Vernon.

Q. And all upon the idea that they then had no way?

A. It was understood by all present that there was none.

Q. So, if I understand, Mr. Hanna, it was understood—conceded by the company?

A. I never was present.

The COURT. They talked of getting connection some other way, would leave the inference——

A. Governor Casey and I talked the matter over. I knew Governor Casey better than almost any other man there; he was the only man I understood to be a member of the
580 corporation then. The business was being transacted by Smith and Company. I was under their employ. I really tried and failed. I am not persuaded what year this

was. Parties say it was the year '59 I went there. It was while Vanduser, Smith and Company had charge.

The COURT. Before the execution of these deeds?

A. It must have been before that. When Judge Wilson first showed me these deeds I told him I was opposed, and from that time I had no connection with the business. Employment as attorney ceased, when.

Q. Take any vote in '59?

A. My recollection is it was long before that.

The COURT. Probably mistaken?

A. I may be. The year that work was going on was the time I was over there.

Cross-examination by Mr. Scates: Cross-ex.

Q. Before these deeds were made you were employed?

A. Yes; before the deed of trust. When Judge Wilson showed the mortgage and deed of trust, from that
581 time I had no further business there.

Q. Were you present when these contracts were presented, deed of trust and mortgage? Not present when deed presented.

A. I was not.

Q. In the town?

A. Don't know. They were shown to me when they were all drawn up. They were brought down to my room by somebody. My guess would be they were executed at that time.

Q. Assume his debt?

A. I don't know anything about assuming, any further than his connection.

Mr. MCCLERNARD. You were attorney for Vandeuser, Smith and Company?

A. Employed when they first came there, I believe. I drew the contract with Wayne County. From that time I was acting as attorney for them and the Mount Vernon Railroad Company. Contract with Wayne Co.

582 Mr. BEECHER.

Mr. STUART. I would ask Mr. Beecher whether, on examining the record, there was any vote taken upon an order submitting the subject to a vote of the county? Mr. Beecher.

A. I made very thorough search myself, and had the clerk assist me, but could find—— But one vote by the county.

Q. But one vote of the people?

The COURT. But one vote upon the subject?

A. Yes. There was a meeting of the county court, I think, in September, at which some disposition was made of the lands—some order.

Mr. GOODWIN. We object to this, because the record will show.

A. A special term of court was afterwards called, with a view of taking all the lands out of market.

Mr. MCCLERNARD. No, sir; no such order as that.

The COURT. Never but one vote is all you want to give?

Mr. FREEMAN. When did you get this paper;
583 (copy of articles of consolidation between Mt. Carmel and New Albany Railroad, and the Belleville and Fairfield Railroad?) Articles of consolid., N. A. & Mt. C. and Bellv. & F.

A. From the secretary of state's office.
Q. Among the files of the office?
A. Yes, sir; I suppose so. It was given to me there.
The COURT. What is the date?
A. 15th day of March, 1859.
(The reporter was here directed to make a copy of the paper and file it.)

Objection.

Mr. MCCLERNARD. Subject to our objection?
Mr. HAY. As to relevancy?
Mr. MCCLERNARD. Yes, sir.

584 UNITED STATES,
Southern District of Illinois, ss:

Be it remembered that, on the twenty-third day of August, A. D. 1869, personally appeared Samuel J. R. Wilson, of Wayne County, Illinois, before me, a notary public for said county of Wayne, appointed by the governor of the State of Illinois in and for the said county, in the southern district of Illinois, and authorized under the laws of the United States to take affidavits and acknowledgments of bail, etc., to testify, and in truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Illinois, wherein John W. Kennicott, Thomas Upham, Eleazer W. Stones, Joseph W. Ward, and Austin Myers are the complainants, and The Board of Supervisors of the County of Wayne and The Mount Vernon Railroad Company are the de-
585 fendants, on a bill in chancery; and, the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Deposition of S. J. R. Wilson.

My name is Samuel J. R. Wilson; my age is fifty-three, and reside in Wayne County, State of Illinois, and have resided there for the last forty years. I was elected judge of the county court of said Wayne County in the month of November, 1857, and acted as such till November, 1861. I was familiar with the transactions of the county court of Wayne County in all that was done in relation to the execution of the mortgage of the swamp lands of said Wayne County, for securing the bonds of the Mount Vernon Railroad Company. I have examined a certified copy of the order of the county court of said Wayne County, passed on the 14th day of December, 1859, and which I attach
586 hereto as Exhibit "A;" and, under the authority of said order, I went to New York, and, by the mutual agreement of myself and Norman A. Smith and Ira Hearsy, who claimed to act for the Mount Vernon Railroad Company, four hundred thousand dollars of the bonds of the said railroad company was transferred from the possession of the said Smith and Hearsy, who took them from a safe in an office having a sign of the Mount Vernon Railroad Company over the door, and transferred to Isaac Seymour, the trustee named in the mortgage; and while I was in New York on the above business, I was shown, but by whom I do not now recollect, the original contract or agreement, a copy of which I took from it and attach hereto as Exhibit "B," which was taken by me either at Albany or New York City; and the parties present

Albany were Uriah Jameson, David Newcomb, J. G. Elliott, Aus-
587 tin Myers, and L. D. Crippin, and those present at New York City were S. B. Kendrick, L. D. Crippin, Ira Hearsy, and N. A. Smith. My object in going to Albany, was to see the prospect and progress of the Railroad Company in building the said road. While pursuing these inquries, I was informed by N. A. Smith or Ira Hearsy, that they had a contract with L. B. Kendrick for railroad iron for this road, and that said Kendrick represented that he had purchased the pig iron to make the rails of said road. I had been to New York on this railroad business in June, 1869.

Question. Look upon the paper now shown you as a copy of an original in the hands of John N. Whitney, of New York City, attorney for Isaac Seymour, trustee in said mortgage, and hereto attached as Exhibit "C," and state if you signed a memoranda at the foot of said exhibit?

Answer. I signed some kind of a paper for Mr. Whiting, certifying the correctness of some bonds—I think between three and five
588 bonds. I went with Thomas M. Scott, one of the associate judges of the Wayne County court, to St. Louis, to assist in negotiating a contract with Vanduzer, Smith and Company, to build a railroad through Wayne County, which was in the winter of 1858–'9, which contract was entered into before the bonds and mortgage above referred to.

Cross-examination by C. A. Beecher, attorney for the defendants:

Acting under the authority of the order of the county court above referred to, I made one trip to New York City, and but one, and while there consented to the transfer of a portion of the railroad bonds from the hands of Smith & Hearsy to Isaac Seymour for safe-keeping, with the understanding that said bonds were placed there for safe-keeping, and not for sale or transfer, and that said bonds were to be delivered to the railroad company only as the work progressed in Wayne County; that afterwards he made other trips to New York City, but not
589 under the order above referred to; that, sometime in the early part of 1861, he went there on private business, and while there he thinks he gave one John N. Whitney some kind of a statement concerning some bonds of the Mount Vernon Railroad Company; that, sometime in the spring of 1859, Zadoc Casey, A. N. Grant, B. L. Voorhes, & Isaac T. Vanduzer called upon me at my private residence in Fairfield, Illinois, and while there Thomas M. Scott, one of the associate justices of Wayne County, and myself, as county judge, executed the mortgage upon which this suit is instituted; that said mortgage was executed not at a regular or special session of the county court of said county, and that we were not, at the time of executing the same, acting in our official capacity as a county court of said county.

(Objected to by complainants.)

Reëxamined on the part of the plaintiffs by W. B. Scates, attorney.

He thinks that the understanding referred to in the cross-exami-
590 nation was expressed in a receipt given to him by said Seymour, or said receipt may have been given to some one else, and deposited with him, and I do not now know where the receipt is.

S. J. R. WILSON.

591 UNITED STATES,
Southern District of Illinois, ss:

I, James McCarty, a notary public appointed by the governor of the State of Illinois, and for the southern district of Illinois, under and by virtue of the acts of Congress, do hereby certify that the reason for

taking the foregoing deposition, and the fact is, that the witness is an important one in the cause. I further certify that due notification of the time and place of taking said deposition was made out and served upon the defendant's attorney. I further certify that, on the twenty-third day of August, A. D. 1869, I was attended by Walter B. Scates, of counsel with the said complainant, and by Charles A. Beecher, of counsel with the said defendants, and by the witness, who is of sound mind and lawful age; and the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the
592 deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal this 24th day of August, A. D. 1869.

[L. S.] JAMES McCARTNEY,
Notary Public for Wayne County,
In the Southern District of Illinois.

593 *Articles of consolidation.*

Articles of agreement to join together, unite, consolidate and merge the Belleville & Fairfield Railroad charters & companies with the Alton, Mount Carmel & New Albany Railroad charter & company, February 26, 1859.

Whereas the legislature of the State of Illinois passed an act entitled "An act to continue the charter of the Alton, M't Carmel and New Albany Railroad Company," approved February 7th, 1851, wherein it is specially provided "that the said railroad company shall have power to unite its railroad with any other in this State, or in Indiana:"

And the aforesaid legislature also passed an act entitled "An act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, wherein it is expressly provided that "the said company shall have full power to join and unite its railroad with any other railroad or railroads now or hereafter to be legally chartered:"

And the aforesaid legislature also passed an act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, in which it is expressly provided that the "said company may consolidate
594 or unite with any other road or roads by agreement of the directors or commissioners:"

And the aforesaid legislature also passed an act for a public or general law, entitled "An act to enable railroad companies and plank-road companies to unite, consolidate, and join together upon such terms and conditions as they may respectively agree upon," approved February 28th, A. D. 1854:

And whereas there has heretofore been done a large amount of grading and bridging work upon the line of the Alton, Mount Carmel and New Albany Railroad, by said company, from the town of Mount Carmel, on the west bank of the Great Wabash River, running westward, across the whole width of Wabash County, and continued through the town of Albion, and across the most expensive part of the line in Edwards County, and partly across the county of Wayne:

And also the citizens of Wabash, Edwards, Wayne, and Washington counties have already made liberal subscriptions for shares of the capital stock of the said Alton, Mount Carmel and New Albany Railroad Company, and the said Alton, Mount Carmel & New Albany Railroad Company have already obtained & procured the right of way for their
595 railroad line, at considerable cost and expense, entirely across the counties of Wabash and Edwards, and also across a large part of Wayne County:

And the line of the Alton, Mount Carmel and New Albany Railroad Company has already been surveyed, levelled, staked out, and located with great care, and at a large expense and cost to said company, by well qualified and competent engineers, all the way from the west bank of the Great Wabash River, at the town of Mount Carmel; and thence entirely and continuously across the whole width of the three counties of Wabash, Edwards, and Wayne, and into the eastern portion of the county of Jefferson, within a few miles of the town of Mount Vernon, passing in its route through the three county towns of Mount Carmel, (3), Albion, and Fairfield:

Therefore, know all men by these presents that we, the undersigned commissioners named in the aforesaid "act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855; and also named in the aforesaid "act to amend an act to incorporate the Belleville and Fairfield Railroad Company and to change its name," approved February 11th, 1857, for and in consideration of the
596 large sums of money heretofore paid by the aforesaid Alton, Mount Carmel and New Albany Railroad Company, and by them expended for large amounts of grading and bridging work already done on their line of railroad in the three counties of Wabash, Edwards, and Wayne, and the heavy costs by them already paid for obtaining the right of way for their line of railroad, together with the expenses by them already paid for surveying, leveling, staking out, and finally locating nearly sixty miles of their line of railroad, entirely across the said three counties of Wabash, Edwards, and Wayne, together with the consideration that the said railroad company have already procured and obtained the right of way, and large amounts of subscriptions for shares of the capital stock of their railroad company, from the citizens of said counties, as aforesaid: For all of these considerations together, as well as for securing the peace, harmony, prosperity, welfare, and unity of action amongst all the friends of said railroad along the whole line of the Alton, Mount Carmel and New Albany Railroad; and as a measure or means best calculated to insure (4) the success of said raiload line, by more effectually securing the confidence of railroad capitalists,
597 who are relied upon to furnish the necessary amount of money required to finish said railroad, hereby convincing them that there are not two antagonistical or conflicting parties interested in behalf of two separate charters for constructing the same line of railroad; and for the purpose of preventing and removing the continuance of any just cause for any suspicion arising or existing about any opposing or conflicting views or actions, either seemingly or really entertained between the friends of said railroad line, and in order to insure more fully and effectively the still greater certainty of obtaining sufficient money to complete the construction of said line of railroad at the earliest day practicable:

Therefore, we, the commissioners named in the two acts hereinbefore mentioned, hereby agree to unite the Belleville and Fairfield Railroad charter and the charter contained in the "act to amend the act to incor-

porate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, to and with, and join together, and consolidate the same with the Alton, Mount Carmel and New Albany Railroad Company; and by the act of agreement on our part, we hereby assign, sell, transfer, and convey all and everything of
598 and belonging to, and concerning the aforesaid charters of the Belleville and Fairfield Railroad Company, as contained in both the aforesaid acts, dated February 15th, 1855, and February 11th, 1857, together with all the rights, interests, privileges, powers, properties, and fran(5)chises therein contained, and thereunto in anywise belonging, for all the reasons and considerations aforesaid, unto the Alton, Mount Carmel and New Albany Railroad; and all the acts of the legislature respecting the Belleville and Fairfield Railroad as aforesaid, are hereby merged into, and united with the said Alton, Mount Carmel and New Albany Railroad Company, and hereby transferred to the safe keeping and good management of the president and directors of said last-mentioned railroad company.

As witness our hands and seals, Feb'y 26th, 1859.

HENRY GOLDKING.	[SEAL.]	HIRAM BELL.	[SEAL.]
REES HINCKLEY.	[SEAL.]	D. TURNEY.	[SEAL.]
JOH' MANS.	[SEAL.]	JOHN KEEN, S'R.	[SEAL.]
EDWARD TITIERAN.	[SEAL.]	WILLIAM PICKERING.	[SEAL.]
W'M M. PHILLIPS.	[SEAL.]	WILLIAM RUNCIE.	[SEAL.]
A. D. HAY.	[SEAL.]	CHARLES SCHOFIELD.	[SEAL.]
A. WATTS.	[SEAL.]	T. M. CASEY.	[SEAL.]
C. O. B. GOFORTH.	[SEAL.]	DENSEY KENNEDY.	[SEAL.]
JA'S H. BEALL.	[SEAL.]		

599 RAILROAD OFFICE, ALBION, EDWARDS CO., ILLINOIS,
March 15th, 1859.

At a meeting of the board of directors of the Alton, Mount Carmel and New Albany Railroad Company, held this 15th day of March, 1859, whereat a legal quorum of said board of directors being present, viz: William Pickering, president; William Runcie, Cha's Schofield, George J. Johns, and William Schofield:

When, on motion, it was unanimously—

Resolved, That the foregoing agreement, signed and sealed by a majority of the commissioners or directors named and appointed in the act passed by the legislature of the State of Illinois, entitled "An act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, and also signed and sealed by the majority of the commissioners or directors named and appointed in the act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857; the said agreement hereinbefore set forth and signed and sealed by said commissioners or directors to unite, consolidate, and join together the said Belleville and Fairfield Railroad charter, approved February 15th, 1855, together with the amendment thereof, approved February
600 11, 1857, with and to, and merge the said charters and all their powers, privileges, and franchises into the Alton, Mount Carmel and New Albany Railroad charter and company, is hereby accepted, confirmed, ratified, and agreed with, by the president and quorum of the board of directors (7) of said last-named railroad company.

And whereas of the said commissioners named and appointed in the acts of the Belleville and Fairfield Railroad charter, approved February 15th, 1855, and the amendment thereof, approved February 11th, 1857,

it appears that the late Jno. M. Johnson, of Jefferson County, Illinois, died in November, 1856, and the late William Kinney, of St. Clair County, died in October, 1858, and James M. Lucas, late of Washington County, Illinois, sold his dwelling-house, and removed from the State of Illinois in 1858, to become the permanent resident of some other State, therefore he, the said Lucas, no longer has any interest in the construction of said railroad, and could not have an opportunity of signing the foregoing agreement, because of his being a non-resident of this State when said agreement was signed and sealed:

Therefore be it hereby known unto all men that it is (further)—

601 *Resolved*, by the president and board of directors of this railroad company that, for all of the foregoing reasons and considerations contained in the agreement hereinbefore set forth as aforesaid, and for the further reason that the majority of the stockholders of the Alton, Mount Carmel and New Albany Railroad Company, having first signed their written agreement and consent to unite, consolidate, and join together the Belleville and Fairfield Railroad charter and company, dated February 15th, 1855, together with its amended charter and company, dated February 11, 1857, with and unto this their railroad company; and that we, whose names are hereunto subscribed as president and directors of this the said Alton, Mount Carmel and (8) New Albany Railroad Company, do hereby consent, concur, and agree with, accept, ratify, and confirm the foregoing agreement, which a majority of the commissioners or directors named and appointed in the "act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, and also a majority of the commissioners named and appointed in the act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, have signed and sealed, in their own proper handwriting, for the sole purpose of uniting, consoli-

602 dating, and joining together, and by their said agreement they have united, consolidated, and joined together the aforesaid Belleville and Fairfield Railroad charters and companies with and unto the said Alton, Mount Carmel and New Albany Railroad charter and company, and all the powers, rights, privileges, and franchises of the said original Belleville and Fairfield Railroad charter, approved February 15th, 1855, and also of their amended charter, approved February 11th, 1857, are, by said agreement of said commissioners or directors hereinbefore set forth, and by this present acceptance thereof and agreement therewith, are all perfectly and completely merged into and with the said Alton, Mount Carmel and New Albany Railroad charter and company.

In witness whereof we (9) have hereunto set our hands and seals this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM PICKERING, *President.* [SEAL.]
WILLIAM RUNCIE. [SEAL.]
CHARLES SCHOFIELD. [SEAL.]
GEORGE J. JOHNS. [SEAL.]
WILLIAM SCHOFIELD. [SEAL.]
LABAN G. RUSSELL, *Secretary.*

603 Then afterwards, to wit, on the 28th day of December of the year last aforesaid came the said complainants, by their solicitors, and filed in said clerk's office their bond of appeal herein, which said bond of appeal is in the words and figures following, to-wit:

Bond of appeal.

Know all men by these presents that we, John W. Kennicott, Joseph W. Ward, are held and firmly bound unto The Board of Supervisors of Wayne County, Illinois, and others, in the sum of three thousand ($3,000 00) dollars, to be paid to the said defendants, their successors and assigns, executors, and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of us our heirs, executors, and administrators, firmly by these presents, sealed with our seals, respectively, dated this 21st day of December, A. D. 1870.

Whereas John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, Austin Meyers, Morris J. Earle, Cyrus Wakefield, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, Joseph Burnett, William L. Rolstom, William P. Emmerson, &
604 William R. Hodges have prosecuted an appeal to the Supreme Court of the United States for the southern district of Illinois, rendered in the case of John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, W'm P. Emmerson, John S. Smith, Henry V. Davis, W'm C. Plunkett, W'm L. Rolston, J. J. Dixwell, Joseph Smith, A. F. Gould, A. H. Ward, John H. Brown, Joseph Burnett, Morris J. Earle, Cyrus Wakefield, Austin Meyers, and W'm R. Hodges, complainants, and The Board of Supervisors of Wayne County, Illinois, and others, defendants.

Now, therefore, the condition of this obligation is such, that if the above-named John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, William P. Emmerson, John S. Smith, Henry V. Davis, William C. Plunkett, William L. Rolston, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, John H. Brown, Joseph Burnett, Morris J. Earle, Cyrus Wakefield, Austin Meyers, and William R. Hodges shall prosecute their said appeal to effect, and answer all damages and
605 costs if they shall fail to make good their plea, then this obligation shall be void; otherwise shall remain in full force and virtue.

Signed and sealed in the presence of—

WALTER B. SCATES, for Kennicott.	JNO. W. KENNICOTT.	[L. S.]
C. H. A. WARD, to J. W. & A. H. Ward.	JOSEPH W. WARD.	[L. S.]
	ANDREW H. WARD.	[L. S.]
H. C. BUXTON, to W. R. H.	W. R. HODGES.	[L. S.]
JOSEPH W. WARD, to J. J. D.	J. J. DIXWELL.	[L. S.]
ANDREW H. WARD.	JOSEPH SMITH.	[L. S.]
	EBENEZER W. STONE.	[L. S.]
JOSEPH W. WARD.	JOSEPH BURNETT.	[L. S.]
ANDREW H. WARD.	W. P. EMERSON.	[L. S.]
JOSEPH W. WARD.	JOSEPH S. SMITH.	[L. S.]
JOSEPH W. WARD.	A. F. GOULD, By JAMES GOULD.	[L. S.]
JOSEPH W. WARD.	JOHN L. PRIEST.	[L. S.]
ANDREW H. WARD.	W. C. PLUNKETT,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	HENRY V. DAVIS,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	W'M L. ROLSTON,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	D. L. PHILLIPS.	[L. S.]

(Indorsed:) Approved. S. H. TREAT, *Dist. Judge.*

(Also indorsed:) Filed December 28th, A. D. 1870. J. A. Jones, cl'k.

606 Then, afterwards, to wit, on the second day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-one, the following further proceedings were had, in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Seargeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges,
vs.
THE BOARD OF SUPERVISORS OF WAYNE County and the Mount Vernon Railroad Company. } In chancery.

This day again came the parties, by their counsel, and submit this cause to the court, on pleadings and proofs, and the production in
607 evidence of the bonds and interest warrants described in this bill of complaint, the court having heard the same and the argument of counsel thereon, and being now sufficiently advised in the premises, it is ordered and decreed, by the court, that the complainants' bill be dismissed with costs, on the ground that, the proofs failed to show that, at the date of the mortgage and deed of trust in question, there was any line of railroad constructed, or authorized to be constructed, through Wayne County, with which the M't Vernon Railroad was joined, connected, or intersected. And, thereupon, the complainants pray an appeal to the Supreme Court, which is allowed on one or more of them entering into bond, to the defendants, in the penalty of three thousand dollars, with one or more sureties to be approved by the court, and conditioned as the law directs; and they having perfected their appeal by the production of a bond, approved by the court, it is therefore ordered by the court, that the clerk of this court certify the record of the proceedings in this cause into the Supreme Court of the United States.

608 And it is further ordered by the court that the injunction heretofore ordered in this cause continue in force during the pendency of the appeal, and until the further order of this court.

It is, therefore, ordered and decreed that the defendants receive of the complainants the costs and charges by them about their defence in this behalf expended, and that execution issue therefor as in judgements at law.

609 *Stipulation No. 1.*

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE CO. AND The M't Vernon R. R. Co. } In chancery.

It is hereby stipulated and agreed by and between the undersigned,

counsel for the said complainants and for the Board of Supervisors of Wayne County, that the foregoing transcript contains all that is necessary for the proper determination of this case, and that the same may be taken and considered by the Supreme Court of the United States, for the purposes of this appeal, as a full and complete transcript of the record and proceedings in this case.

It is further agreed that the counsel for said supervisors did, on the hearing of this cause, object to each and every item of testimony offered and introduced in evidence by said complainants at the time the same were respectively offered, and it is to be considered for the purposes of this appeal that such objections were entered of record at the time they were made, and this stipulation as to objections to testimony is reciprocal with both parties.

Springfield, Ill., March 30, 1871.

WALTER B. SCATES.
McCLERNAND & BROADWELL,
Sol's for Complainants.
STUART, EDWARDS, & BROWN,
Of Counsel for Wayne Co.
N. L. FREEMAN,
Of Counsel for Wayne County.

(Indorsed:) 2233. Jno. W. Kennicott et als. vs. Board of Supervisors of Wayne Co. et als. Filed March 30, A. D. 1871. J. A. Jones, cl'k.

610 *Stipulation No. 2.*

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, et al. } In chancery.

We, the undersigned, attorneys for both complainants and defendants in above-entitled cause now pending on appeal from the circuit court of the United States within and for the southern district of Illinois, to the Supreme Court of the United States, being desirous to obtain a hearing and decision of said cause in said last-mentioned court at the earliest practicable and convenient period, do hereby agree that the record of this cause for the Supreme Court aforesaid may be filed in said court at any time within five months from this date hereof, and that, upon such filing of said record, the said cause and appeal shall be taken and treated as if filed in time, under the rules of said Supreme Court, to entitle the same to a hearing at the present term of said court.

January 6th, 1871.

McCLERNAND & BROADWELL,
Sol's for W. R. Hodges.
KNAPP AND FREEMAN,
Att'ys for County of Wayne.
WALTER B. SCATES,
For Complainants.
G. A. GOODWIN,
For Comp'ts & Appellants.

(Indorsed:) John W. Kennicott et al. vs. Wayne County, &c. Agreement.

611 Circuit court of the United States, southern district of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify that the foregoing six hundred and ten pages contain a full, true, and complete transcript of all the papers, pleadings, and evidence filed and proceedings had in said entitled cause of John W. Kennicott et al. vs. The Board of Supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Company, as required by the foregoing stipulation to said transcript attached, and as truly, fully, and completely as the said papers, pleadings, and proceedings under such stipulation appear of record in my said office.

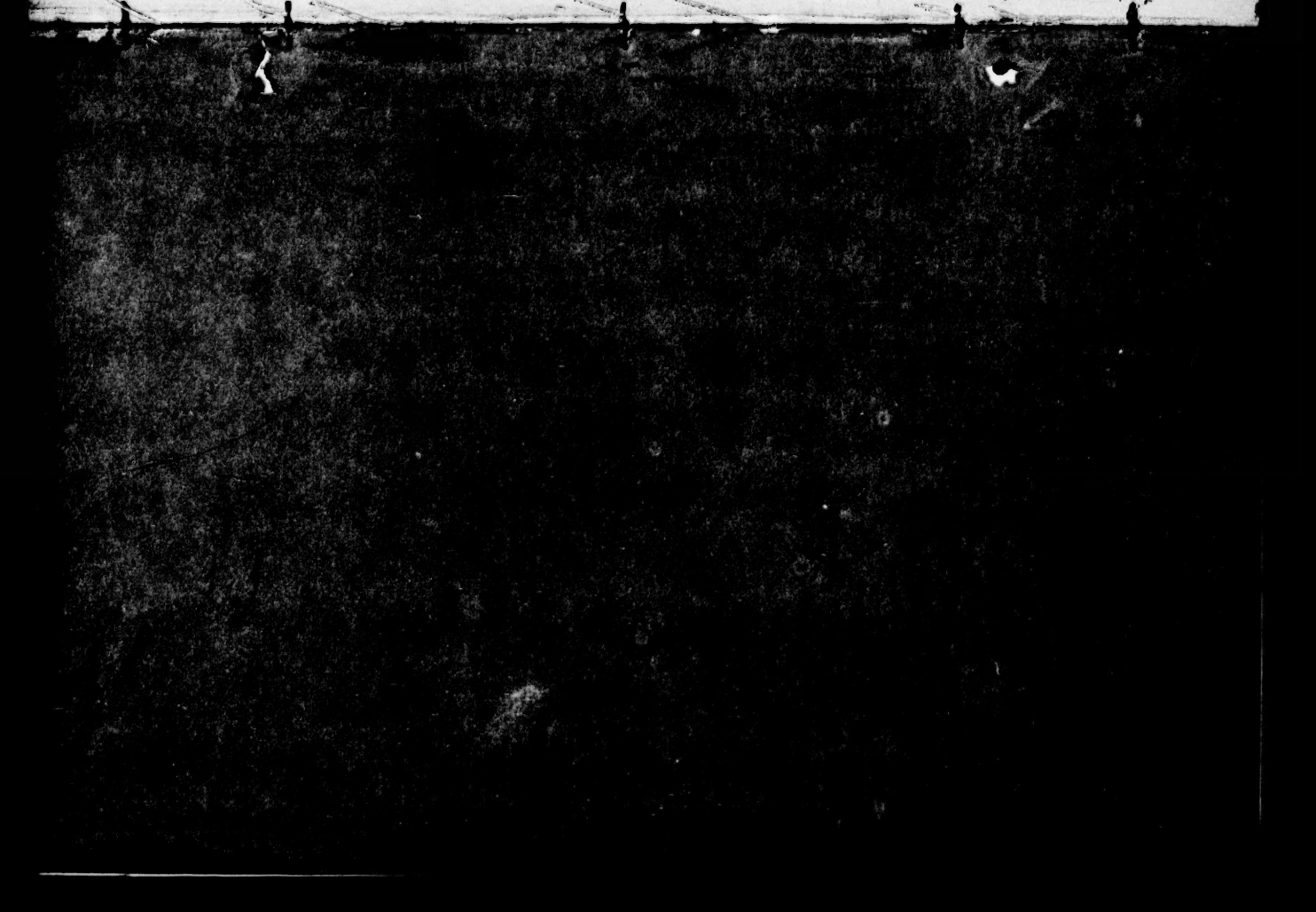
In witness whereof I have hereunto set my hand and affixed the seal of said circuit court at Springfield, in said district, this thirtieth day of March, in the year of our Lord one thousand eight hundred & seventy, & of our independence the 95th.

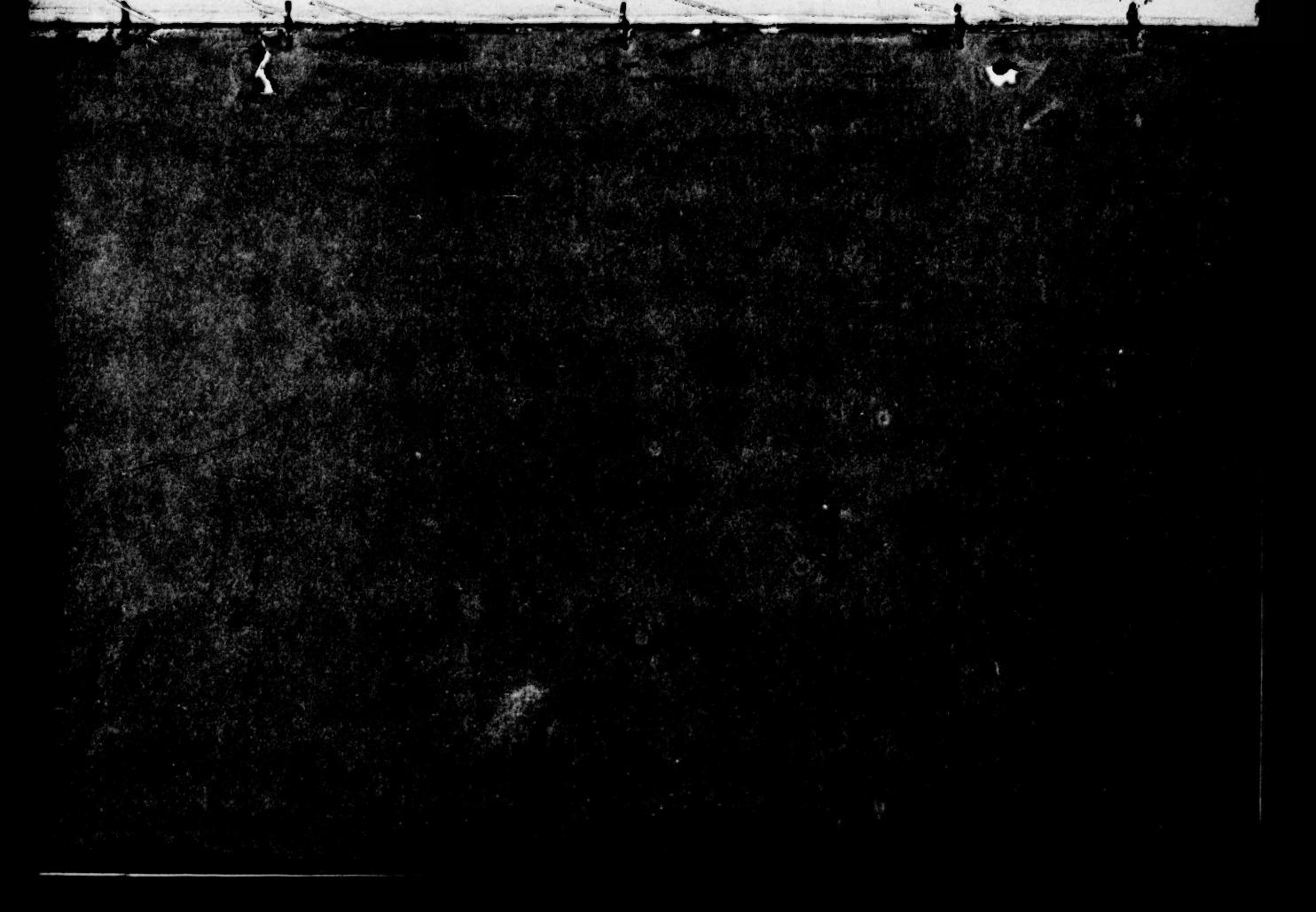
[SEAL.] J. A. JONES, *Clk.*

[5-c't int. rev. stamp, canceled.]

Fee for transcript, $190 50 paid.
Volney Hickox fee, $59 50.

(Indorsement on cover:) No. 537. John W. Kennicott, J. W. Ward, E. W. Stone, A. Meyers, M. J. Earle, C. Wakefield, J. S. Smith, H. V. Davis, J. L. Priest, W. C. Plunkett, J. J. Dixwell, J. Smith, A. F. Gould, A. H. Ward, J. Burnett, W. L. Rolstom, W. P. Emmerson, and W. R. Hodges, appellants, vs. The Board of Supervisors of Wayne County, impleaded with the Mount Vernon Railroad Company. S. Illinois C. C. U. S. Filed 25th April, 1871.





Supreme Court of the United States.

JOHN W. KENNICOTT, et al.,

Appellants,

vs.

The Supervisors of the County of Wayne, Illinois,

Appellee.

OPENING ARGUMENT FOR APPELLANTS.

CHICAGO:

OAKLEY & SON, PRINTERS, 69 & 71 DEARBORN ST.

1871.

Supreme Court of the United States.

JOHN W. KENNICOTT, et al.,

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The Supervisors of the County of Wayne, Illinois,

Appellee.

OPENING ARGUMENT FOR APPELLANTS.

CHICAGO:

OAKLEY & SON, PRINTERS, 69 & 71 DEARBORN ST.

1871.

Argument of Appellant's Counsel

IN THE CASE OF

JOHN W. KENNICOTT, et al.,

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

If it were admitted on all sides that this bill was brought to foreclose a mortgage given to secure the payment of a promissory note or other negotiable instrument, according to its tenor and effect, for condition broken, and the mortgage and note or instrument were produced in evidence, and there was no counter proof, little or no difficulty would be felt, either by the Court or by counsel, in dealing with the case.

Undoubtedly, upon such a showing, a decree would be made for the sale of the mortgaged premises to pay the debt. Is the case at bar essentially different from the case thus stated? Is it not in fact, and in law, essentially the same? Let us now proceed to enquire:

The appellants show by their bill, that each of them bought, in good faith, and for a valuable consideration, and in open market, and still hold, in like good faith, a considerable amount of the construction bonds of the Mount Vernon R. R. Co., *negotiable by delivery*. That Wayne County conveyed by mortgage, and by deed of trust, about one hundred thousand acres

of her swamp and overflowed lands—to Isaac Seymour, of the city of New York, to secure the payment of the principal and interest of ($800,000.) of said construction bonds issued by the Mount Vernon R. R. Co., according to their terms, which are copied into the mortgage and deed of trust. That Seymour died before the commencement of this suit, without having executed the trust, or foreclosed the mortgage; and that before the commencement of this suit, the conditions of these conveyances were forfeited by a failure to pay the accrued interest on the bonds of an amount of more than one years interest upon the whole $800,000; and that in fact, no part of the interest has ever been paid hitherto.

The bill prays—first, that an account be taken of the arrears of interest due; second, that a trustee be appointed to execute the trusts declared; third, that a decree be made for the foreclosure and sale of the mortgaged premises, for the payment of the appellant's and other creditors of the trust fund; and fourth, for *other* and *further* relief.

To support these allegations, and entitle themselves to the relief prayed, the appellants have introduced in evidence the mortgage—deed of trust—bonds held by them with interest coupons attached, and their own sworn testimony, that they are *bona fide* holders of their respective bonds, and that they purchased them in open market, in good faith, for a valuable consideration.

The evidence further shows that the bonds of one of the appellants have been accidently destroyed by fire since he became a party to the suit.

What then, we repeat, is there to distinguish this case from such a case as we have stated? Is it not essentially the same? Does it not stand upon the same foundation in law and in fact? Is it not thus fully sustained by the evidence? The mortgage and deed of trust recite upon their face all the facts necessary to

give the defendant the power to make them, and asserts and recites the *existence* of the power in the county to execute the deeds sued on, and the County Court of Wayne County entered its order in open Court reciting that these deeds were executed in open Court, on the day they bear date, which order, duly certified, is in evidence in this case. The defendant is bound by *estoppel* by the *recitals* in the deeds, and the record of its own court, and is *estopped* in law and equity from denying the facts so recited.

But the defendant's counsel answer no; and in support of this negative, insist upon the provisions of the 7th, 8th, 9th, and 10th sections of the act incorporating the Mount Vernon R. R. Co., they are as follows.

"Sec. 7. The corporation may borrow such sums of money as they deem advisable, and upon such terms as they may agree for the carrying out of the objects of this act, and may provide any security therefor they think best, by bond and mortgage, or otherwise."

"Sec. 8. The county Court of Jefferson Co. are hereby authorized and empowered to subscribe for such amount of the capital stock of said company, as they may think proper. They may issue the bonds of the county, and provide for the payment of the principal and interest thereof, by *sale* or *mortgage*, *one or both*, of the *swamp* and *overflowed lands* of said county, and dispose of such bonds for money to pay, or in payment of their subscription to said stock; all and each to be upon such time, *terms*, and in such *mode* as they may *deem* best; or they *may make such other disposition* of said swamp and overflowed lands in *aid* of the *construction* and maintenance of said R. R. as they *deem best* for the public interest of said county."

"Sec. 9. Before any disposition is made of said swamp and overflowed lands, or any subscription to the stock of said company, the said County Court may, at any regular or special term

of said court, order a special election to be held for the purpose of taking the sense of the qualified voters of the county thereupon—giving such notice thereof as they may deem proper,— and which shall be conducted, and returns made, canvassed and published in all respects as other county elections. The County Court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct, idea of the plan or plans proposed by them for aiding in constructing of said road; which said proposition shall be printed at large, as an election ticket, and the voters may express their will on said proposition, by writing "yea" and "nay" on a separate ticket. The proposition or plan having the highest number of votes shall be adopted by the County Court, *Provided*, a majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election."

"Sec. 10. Any county through which said road *may* run and *every* county through which *any other railroad may* run, with which this road *may be joined*, *connected*, or *intersected*, *may*, and are hereby *authorized* and *empowered* to *aid* in the *construction* of the *same*, or of *such other road* with which it may so connect; and for this purpose the provisions of the seventh, eighth, and ninth sections of this act *shall extend*, *include*, and be *applicable* to *every* such county, and *every such* railroad."

Upon these sections the opposing counsel insist that Wayne county had no power to execute the deeds of trust and mortgage in question, except upon condition, that although the 7th and 8th sections confer such power, yet that they confer it upon the conditions specified in the 9th and 10th sections, which conditions are two fold, they say, viz.—1. That the Mt. Vernon R. R. should have been *previously* run through Wayne county; or 2, That some other R. R. should have been *previously* run through that county, joining, connecting, or intersecting with the Mount Vernon R. R.

The defendant's counsel insist that the powers conferred upon Jefferson county by the 7th and 8th sections were not communicable to Wayne county except upon the conditions specified in the 10th section. Now what are those conditions as *claimed by them?* 1. That the Mount Vernon R.R. should have been *constructed* through Wayne county; or, 2. That some other R. R. should have been *constructed* through Wayne county, joining, connecting, or intersecting the Mount Vernon R. R. They contend that the performance of one or the other of these conditions was a *pre-requisite* to the power of Wayne county to dispose of her swamp and overflowed lands to the ends contemplated by said sections, and the deeds sued on. In other words, that a material, practical connection of roads actually built—that is—of the Mount Vernon R. R. with some other chartered R. R. running through Wayne county, should have been effected, before such power of disposition could be lawfully exercised by Wayne county.

We deny the correctness of this construction of the 10th section. We deny it, 1. Because the language of the section does not sustain it; 2. Because it would defeat the policy and object of the act. The language of the section does not sustain it, because it does not declare that a railroad *shall have been built* and *completed* through Wayne county or through Jefferson county, with which the Mount Vernon railroad *shall have been connected*,—before Wayne county would be authorized to execute such power of disposal of its swamp land;—but the language is that "any county" and "every county" through which any other railroad *may run* with which this road *may be* joined, connected or intersected *may*, and are hereby authorized and empowered to *aid in the construction* of the same, or of such other road with which it may so connect—shall have that power. That is to say, power is given by the language—before *construction* to *aid* in *constructing*, and to give that aid to *one* or *both* of such roads as are located upon lines that *may be joined*

together, or connected or intersected, *when* constructed. The lines of these two railroads were so located by their charters as to join, connect or intersect at Mount Vernon, a point fixed in the charter of both lines.

The language grammatically and legally construed,—is in the potential mood, and alike in the present and future tense of that mood; the present tense, "may be joined," means now joined, already joined; in the future tense it means capable of being joined at a future time. The Legislature used it in this latter sense; and to uphold and sustain the deliberate and solemn transaction of the defendant, the court will construe it as in the future tense. The lines by the charters both run to Mount Vernon—they are capable of being joined at that point, under powers given in both charters to connect with other roads; and one of them runs through Wayne county, therefore, say the Legislature that Wayne county "may," that is—now has the power "*to aid in the construction*" of either road, or both, by donation of her swamp lands.

A railroad may have been built through Wayne county, and connected with the Mount Vernon railroad—this is in the present tense; or a railroad authorized to be built through Wayne county, and authorized to connect with the Mount Vernon railroad at Mount Vernon, is in the future tense, and equally within the meaning of that section entitled to receive *aid* by Wayne county in its construction, by a donation of her swamp lands.

The words *may* run, do not mean, exclusively, be operated when built, but they mean equally to be *located* for the *purpose of building.* And it is in this sense that the section uses the words "may run" and "may be joined," &c, and the other phrase in the same section, "are hereby authorized and empowered to *aid* in the *construction* of the same," are in the present tense, and the moment the charters took effect, on the

15th of February, 1855, this power was conferred upon Wayne county, dependent only upon one condition, *i. e.*, that the people should consent to it, at an election to be held. That consent has been given.

Such a construction of the language of that section appears to us to be entirely grammatical, legal, consistent, reasonable and conclusive.

It gives Wayne county, upon an affirmative vote, control of her swamp lands for this purpose, and by doing so, enables her to aid in the construction of a R. R. through her limits, promptly, efficiently and decisively. And although there was no railroad built, and in operation in the one county or the other, and although no connection was *actually* made, nevertheless it enables her to *aid in constructing one*, which *when* built *can form the actual* connection.

It empowers, induces and accelerates the actual construction and connection, by her *furnishing in advance* part of the means of building a railroad.

Again: suppose a railroad to have been built through Wayne county, through the aid of her swamp lands—a road located with a view, and having capacity by extention, of being connected with the Mount Vernon railroad; would it not in the language of the 10th section be such a road as *might* be extended and connected with the Mount Vernon railroad?

The opposite construction, as we have already said, would defeat the *policy* and *object* of the same act. The policy of the act was to encourage and enable the counties to give *aid* in the *construction* of such railroads as would subserve the interests of their local trade and travel; and to enable them to aid such enterprises and improvements, by placing a valuable fund in their possession for that purpose. But how could this end be accomplished, if this fund was withheld from use, for that

purpose; or until after the completion of the road? Such a construction would leave the county in the same situation she was before the passage of the act, with no other alternative than to pledge her credit and incur a public debt, as a means of securing the construction of a railroad. A cheap privilege costing no other trouble than a Legislative authorization to that end, and continual taxation to meet the debt; but by our construction she has the *present means*, without a debt, in the 100,000 acres of her swamp lands, then lying idle and unproductive, and worth, without a railroad, from one to three dollars per acre. She might have sold it unenhanced by the improvement, and given the proceeds towards making it. But we think she has acted wisely, in aiding by mortgage, to raise the means, and give the aid in building, and thereby enhancing the value of the land, and increasing the amount of the aid.

We will not argue the question that the power by a donation by conveyance of the land direct, or by sale and donation of the proceeds includes the power to mortgage them.

The whole contains all its parts—the major includes the minor.

The meaning and language of the 10th section are: "authorized and empowered to *aid* in the *construction* of the same," *i. e.*, of a road in either county. This must evidently authorize the "*aid*" to be given in advance—before the road is constructed—may give the aid to help to build it. Neither does the phraseology require that the joinder, connection or intersection of two such roads should have been first made. But it only requires that the lines of location of two such roads shall be such that when built they "may be joined, connected or intersected."

The Bellville and Fairfield railroad was so chartered to run through both counties, Jefferson and Wayne, and "may be joined, connected or intersected," with each other when con-

structed. Therefore Wayne County was authorized by the 10th section to *aid* in the *construction* of one or both, by subscribing stock, or by any disposition the county may think proper to make of its swamp lands as provided in the 7th, 8th, and 9th sections.

But if, in fact, a precedent connection of railroads was required as the only condition upon which the power in question could be properly exercised, we still insist that such a connection in *fact* did exist. We insist that it did, upon several distinct and independent grounds:—1. It existed in and by virtue of law. Descending to particulars, there was the Alton, Mt. Carmel and New Albany R. R. Charter—authorizing the construction of a railroad, and a branch road, the branch to run from Illinoistown—opposite St Louis—to Belleville, Nashville, Mt. Vernon and Fairfield, and thence east to Mt. Carmel, on the eastern border, as Illinoistown is on the western border. The charter was passed in 1836, and authorized the construction of a road on and along a line which had been previously located and graded by the State, from Mt. Carmel to near Fairfield. There too, was the St. Louis and Louisville R. R. charter, passed in 1857, authorizing the construction of a railroad through the same towns, and to and between the same points of *termini* in Illinois. There was also the Bellville and Fairfield R. R. charter, passed Feb. 15, 1855, authorizing the construction of a railroad from Bellville through Nashville and Mount Vernon to Fairfield; and there was the Mt. Vernon R. R. charter authorizing the construction of a railroad from Mt. Vernon to Ashley, selected as a point on the Illinois Central, in Washington county.

And finally the amended charter of the Bellville and Fairfield R. R. passed Feb. 11, 1857, changing the name to St. Louis and Lousville R. R., as above cited, and extending the line through the same towns from Illinoistown to Jeffersonville opposite Louisville.

It will be remarked that Mount Vernon is a point definitely fixed in the lines of these roads, by the very terms of their respective charters; and that consequently the Bellville and Fairfield, or rather the St. Louis and Louisville R. R. was connected, or would connect, at Mt. Vernon with the Mt. Vernon R. R.; and the former would connect at Illinoistown, Bellville, Nashviille, Mt Vernon, Fairfield, and Mt. Carmel, with the Alton, Mt. Carmel and New Albany R. R., and that both would connect at Mt. Vernon with the Mt. Vernon R. R., the two former traversing the same line through the State of Illinois.

Thus connecting legislatively and by law the chartered lines or routes of all the roads at Mt. Vernon; thus fulfilling, within the intention of the Legislature, the condition upon which Wayne county was empowered to dispose of her swamp lands, and execute the deeds in suit. This was a legal connection by the charters, and we submit whether it was not all that was necessary. Wayne county entered into a written contract with Vanduser, Smith and Co., on the 19th of November, 1858, for the construction of a railroad from the eastern boundry of Wayne county, westward through Fairfield and the whole extent of that county to Mount Vernon; (Record, pages 168–184) and Jefferson county entered into another written contract with the same company on the 20th of October, 1858, for the construction of the Mt. Vernon railroad from Mt. Vernon, westward to Ashley, in Washington county, on the Illinois Central R. R. (Record, pp 148–166, 466–474). These contracts specify how these roads should be built, and the compensation, in lands, to be paid by the respective counties therefor, and were assigned on the 12th of September, 1859, with the consent of both counties to the Mt. Vernon R. R. Co. agreeably to an order of the board of directors of that Co. (Record, pp 187, 188). And it should be noted that Wayne county stipulated in the contract with her, that she would furnish the right of way for the road, which was thus to be built through its limits, and cause to be transferred to Vanduser, Smith & Co., the

charter and franchises of the Bellville and Fairfield, or rather the St. Louis and Louisville R. R. Co.; and that any delay occasioned to Vanduser, Smith & Co., by a failure on the part of Wayne county to furnish the charter or right of way, should operate as an extension of the time for completing the road. (Record, pages 177, 178, 179, MS. Print).

Here then we have a connection in another form—*a connection by contract*, of the Mt. Vernon R. R., at Mt. Vernon, with a railroad through Wayne county, to be built by the procurement and contract of Wayne county from east to west, and on to Mt. Vernon. (Record, page 168–185). Was this not a compliance with the condition upon which the county would be authorized to mortgage her swamp lands in aid of the construction of a road through its limits?

To Illustrate—suppose this road, through Wayne county to Mt. Vernon, had been constructed (as the evidence shows that it partly was) according to her contract, and that the Mt. Vernon R. R. from Mt. Vernon to Ashley, had also been constructed, as it was in part, would not such a connection of the two roads have been effected as would have satisfied the statute? We confidently believe it would. Yet the defendants' counsel say it would not, grounding that negative upon a want of alleged authority in Wayne county: 1. To enter into such a contract; and, 2. To build or aid in building an unchartered railroad.

Now what is the validity of these objections? In the first place the 7th section of the Mt. Vernon R. R. charter authorizes the company or county giving aid to build a road, to do so by borrowing money and giving security for it, "by bond, mortgage, or otherwise." The 8th section authorizes any county to subscribe for such amount of the capital stock of a Railroad company as they may think proper, and may provide means to pay for it by issuing bonds, and secure the bonds or provide to pay them by sale or mortgage of the swamp lands

as it *may deem best*, or any county "may make *such other disposition* of swamp and overflowed lands in aid of the construction and maintenance of said railroad, *as they deem best* for the public interest of said county." The policy and design of the Legislature are, as we have said before, to encourage and empower counties to aid in getting a railroad through, with their swamp lands, and after prescribing two modes or plans of doing so, they then add a general power to "make *such other* disposition" "as they deem best," leaving full discretion as to mode, time, terms, &c., &c., to them. Can the Court, construing these provisions with a view of finding and upholding a grant of power evidently intended by the act to effectuate and accomplish a *policy*, an *end*, an *improvement*, say that the county could not make this building contract and these deeds under these provisions? And will the Court say so to bondholders who purchased these commercial or financial securities in open market, in good faith, and for which they paid a fair, full and a valuable consideration, relying upon these and other statutes, the recitals in the deeds and the good faith and honesty of the parties? Defendants' counsel have undertaken to show by argument that this is so; but we must say, by confounding ideas and things differing from each other. It is true that the powers of county municipalities or courts exist in part by legislative grant; but it is equally true that in other respects many of their powers are derived from the common law, adopted in Illinois, and by constitutional grant. The constitution and common law vest in them power to make and repair highways, roads, bridges, ferries and a variety of other municipal powers. Not only is this true, but these Courts rest upon as solid a foundation as the Legislature, the Executive and the Supreme Judiciary of the State themselves. The New England towns, and other local municipal governments through all the colonies, laid deep the foundations of the representative form of government under which we now so hapily and prosperously live, and they did so in the exercise of municipal powers over like local interests. All of these public agencies, as parts of the general machinery

of government, are created by the constitution itself. The municipality of a county is not therefore created by the statutes alone; though some, even most of its powers, may be derived from such sources. Such a municipality is at the same time legislative, executive, judicial and administrative. It may and does perform all these functions. It is, in the language of Chancellor Kent, "an auxiliary agent of the State Government"—having a local republic—exercising and having the right to exercise the functions of local government." De Tocqueville remarks with surprise that "these municipalities, bringing home the right and function of self government to every local community in America, constitute the life blood of American democracy."

Passing from these general considerations, let us next inquire concerning the appropriate and usual objects involving the jurisdiction of county municipalities. Among these, confessedly in England and every where in the United States are artificial facilities for the internal transit of persons and things. Without these facilities society could hardly be held to exist. They constitute one of the leading distinctions between civilized and savage communities. In fact, the march of civilization, in every age and part of the world, has been marked by the augmentation and improvement of such facilities. The familiar histories of Greece and Rome in ancient times, and of England and France in modern times, demonstrate this truth; so the histories of Mexico and Peru in the new world. The absence of such facilities in North America testified to its savage condition. Such, indeed, are the veins and arteries of the body politic, or the social union. They are, in a material sense, the bonds of unity in the form of public roads; they are necessary to enable the Judge to travel on his circuit—the members of the jury to attend the Court in the proceedings of which they are to take a part—the militia-men to attend the stated muster—and the farmer, merchant, and mechanic to convey their products and merchandise to market. As one of

the necessary agencies of civilized society, therefore, an inherent right to open, construct and maintain public roads appertains to every county municipality; and the statute undertaking to confer such a right or jurisdiction, only verifies and confirms it; and the *right* in this fundamental sense is as available and undeniable to construct a railroad as a turnpike, where the means are at the disposal of the county. If the right of way can be procured without condemnation, no charter would be necessary either to the county or to individuals to construct a railroad. In the course of time it may and probably will eventuate that railroads, through the agency of municipalities, or the association of the inhabitants, and capital of neighborhoods, will be so constructed in the plain regions of Illinois and other States, as to be adapted to the wheels and use of ordinary wagons, and so supercede, to a considerable extent, earth, plank, and turnpike roads. Thus we arrive at the right and the power of a county, as a municipal corporation, to contract for the construction of any public road called for by its local wants, or to have it constructed through its own agents.

But if this were not true, still the contract was authorized and validated by the 7th, 8th, 9th, and 10th sections of the Mt. Vernon R. R. charter, and the charter and amended charter of the St. Louis and Louisville R. R., and the general statutes of the State. The contract of Wayne county to have the road built, as we have seen, contemplated the connection of a railroad to be built and run through Wayne county with the Mt. Vernon R. R.; and upon such connection, the sections, charter and laws above referred to "authorized" and empowered Wayne county "to sell, mortgage," or "otherwise dispose of her swamp lands in aid of the construction" of the former or both roads, unquestionably the power here clearly given "to sell, mortgage," or "otherwise dispose of their swamp lands in aid" of such construction, carries with it, as incidental thereto, the power to stipulate the terms of disposition; and the "plan," or "mode" adopted by the deeds sued on,

and the building contract is clearly within the "plan" or "mode" voted on and adopted by the people. The power to dispose of and the power to fix the terms of such disposal, are complements of the same general power given by the vote, that is, the donation "as" a *bonus*. If the one power exists, the other by irresistable implication also exists. The opposite view would leave the county with no other power than to make an absolute gift of her lands; yet very inconsistently, in another part of their argument, the defendant's counsel insist that she was without that power. How are we to reconcile this inconsistency? We leave it to our opponents to explain.

Again, the power to convey any real estate belonging to a county was given by general statutes always in force, and still in force in this State. In early times, in this State, the municipal powers of counties were exercised by a County Commissioner's Court; in 1848 the Constitution changed the name to "County Court"; subsequent laws have authorized the people where they choose to adopt township organization, and in such counties the municipal authority is divided between Town Boards and a Board of Supervisors representing the whole county. Between the time of making the deeds and contracts in evidence and the bringing of this suit, Wayne county adopted township organization; hence the suit is against the Board of Supervisors representing the county.

Prior to and ever since 1845, the following general laws have been in force, and still are, to wit: "The County Commissioners of the several counties of this State, are hereby authorized to execute and deliver all deeds, grants, conveyances and bonds which may become necessary in selling and transferring real estate belonging to their respective counties; and such deeds, grants, conveyances and bonds, if made without fraud or collusion, shall be obligatory upon the counties to all intents and purposes." (Rev. Stat. 1845, p. 102, Sec. 26—Scates' Stat., p. 958—Gross' Stat., p. 109, Sec. 40).

"The County (Commissioners) Court may, by their order, to be entered on their minutes, appoint a Commissioner to sell and dispose of any real estate of their county, and the deed of such Commissioner, under his proper hand and seal, for and in behalf of such County, duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey to the purchaser or purchasers all the right, title, interest, and estate whatever which the County may then have in and to the premises so to be conveyed." (Rev. Stat. 1845, p. 132, Sec. 15—Scates' Stat. p. 297—Gross' Stat. p. 159, Sec. 3).

"The County (Commissioners) Court may appoint an agent or agents to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents, duly executed for and on behalf of such county shall be valid and effectual to bind such county, to all intents and purposes." (Rev. Stat. 1845, p. 132, Sec. 17—Scates' Stat., p. 297—Gross' Stat., p. 160, Sec. 5).

Again, a general act was passed February 14th, 1859, giving County Courts general power to sell and dispose of swamp lands and the proceeds of them, viz:

"Sec. 1. The County Courts of the several counties of this State are hereby authorized and empowered to sell and dispose of, at public or private sale, for cash or credit, or for such securities as the County Court may think proper to accept, all or any of the swamp or overflowed lands lying within the respective counties, including also all and every interest, claim, demand and gift granted to them by the State of Illinois, arising under the Act of Congress passed September 28, 1852, and Acts amendatory thereof.

Sec. 2. Wherever a sale has been made or hereafter shall be made by the County Court of any of said lands, and upon delivery by any purchaser or purchasers, to the County Court, of

such securities as the County Court may think proper to take, the purchaser or purchasers thereof shall be entitled to a conveyance of the land so purchased, executed by the Clerk of the County Court, under the seal of the Court, in fee simple thereof.

Sec. 3. The proceeds arising from any sale or sales shall be subject to the order of the County Judge, for such purposes as the County Court may direct.

Sec. 4. This Act shall apply to all the counties of this State, having special laws in reference to the sale of swamp lands, under which they may act, without reference to such special acts, and in counties where township organization has been adopted the Board of Supervisors are authorized to carry out the provisions of this Act. But where County Courts in counties having township organization, are authorized by any special laws to sell and dispose of their swamp lands, such County Courts are clothed with all the power and authority necessary to carry out the provisions of this law; and nothing herein contained shall prevent any County Court or Board of Supervisors from carrying out any sale or sales, contract or contracts, now existing, for the disposal of their swamp lands."

(Gross' Stat. p. 732).

All these acts were in force at the date of the deeds sued on, and confer ample power to make them, and to carry out, under the 4th section of the last act the building contract of Wayne county, under which she had already disposed of her swamp lands by the building contract. They also show that the County Court had power as a Court to convey, that the Court could appoint a commissioner or agent or agents to convey, and that the County Clerk might also convey swamp lands. So that under these remedial and enabling acts, to be liberally construed as such, there are or may be four distinct persons empowered to execute such conveyances.

This act while declaring the absolute and unqualified authority of the County Courts to dispose of the swamp lands; and while legalizing all previous sales of such lands by such Courts; and while making the proceeds of such sales subject to the absolute direction of such Courts; and while extending its provisions to all counties whose swamp lands had been made the subject of special laws, and authorizing them to act under it; also provides that the grantees of such lands "shall be entitled to a conveyance executed by the clerk of the County Court."

Now our opponents repudiate this act in part, and cite it in another part as obligatory. They repudiate it as a source of power affording warrant to the County Court of Wayne county, or to any agency of its appointment to mortgage or convey in trust any of her swamp lands as in this case. They repudiate it as effecting a legalization of those conveyances, and also as placing at the absolute disposal of the County Court the funds or any part of the funds raised upon the lands so pledged; also as a law answering *in pari materia* with the special law mentioned, or as substituting it; but they accept and insist upon it in so far as it relates to the execution of conveyances by the clerk of the County Court.

But we still have a further and explicit *confirmation* of the *power* of *Wayne county* to *dispose* of these lands, under the *vote* taken in November, 1858, and the *powers then existing*, and authorizing such a disposition by *donation*. And we now proceed to show the existence of this power by the *recitals* of the County Court in its *deed* of these lands made March 13, 1856, to *Charles Wood* in trust for the Bellville and Fairfield Railroad and the Alton Mt. Carmel & New Albany Railroad, or any other Company that would build a railroad through the county. These *recitals admit* and *assert* that a *connection had been made* between the Mt. Vernon Railroad and the *two* railroads above; that the *vote had been taken* and carried in Wayne; and that the *power thus to dispose* of them *had* been conferred BY the Mt. Vernon Railroad charter; and that in *execution* of

such authority and *power*, the *conveyance was made* by the County Judges for the county. These recitals are as follows, viz.:

"And whereas the line of the Belleville & Fairfield Railroad will join to and connect and intersect with the aforesaid Mt. Vernon Railroad at some convenient point at or near Mt. Vernon, and thereby the said Belleville & Fairfield Railroad will become a part of and elongation and extension of the Mt. Vernon Railroad, and thereby fully and legally authorized and empowering the counties of St. Clair, Washington and Wayne (through which said Belleville & Fairfield Railroad is situated) to use, exercise and enjoy all the powers, rights and privileges of appropriating and donating all the swamp and overflowed lands respectively belonging to said counties, for the purpose of aiding in the construction of the Belleville & Fairfield Railroad, or any other line of railroad which may pass through any of said counties, and be joined to and connected or intersected with the said Mt. Vernon Railroad, or which may be joined or connected and intersected with the said Belleville & Fairfield Railroad, because of and by reason of said Mt. Vernon Railroad *being* joined to, connected and intersected with the said Belleville & Fairfield Railroad at or near Mt. Vernon as aforesaid. And whereas under the authority and by virtue of the provisions contained in the said 10th Section of the aforesaid Act to incorporate the Mt. Vernon Railroad, the County Court of Wayne county in said State of Illinois, for the purpose of aiding in the construction of the said Belleville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad, held a special term of said Court on the 13th of October, in the year of our Lord one thousand eight hundred and fifty-five, then and there passed an order that on Tuesday after the first Monday in November, 1855, an election should be held by the legal voters of Wayne county for the purpose of voting for or against donating the unsold swamp and overflowed lands of that county to any company that would build and complete in a reasonable time a railroad through and

across the limits of said county from the East to the West side thereof, that is to say, from the town of Fairfield to the West line of said county on the route of the Belleville & Fairfield Railroad, and from Fairfield to the East line of said county along the route of the Alton, Mt. Carmel & New Albany Railroad line as heretofore located and partly graded by the State of Illinois. And after due notice of said election had been given by the said County Court of Wayne county to the legal voters of said county, on Tuesday after the first Monday in November, 1855, an election was held throughout the said county of Wayne, "for" and "against" the donation of all the swamp and overflowed lands belonging to said county to be given and granted as a bounty and premium to any company that will construct and finish a railroad across said county as aforesaid, when at the said election there were eight hundred and thirty-one votes given in favor of and for said donation, and there were two hundred and fifty-eight votes given against said donation as appears by the canvasser's report and certificate of said election now on file in the Clerk's Office of the County Court of Wayne county. And whereas the Alton, Mt. Carmel & New Albany Railroad charter provides and authorizes said railroad shall be made from Jeffersonville in the State of Indiana opposite the city of Louisville in Kentucky, and shall run through New Albany and the Southern portion of the State of Indiana to Mt. Carmel in the State of Illinois, and thence through Albion in Edwards Co., and through the aforesaid town of Fairfield in Wayne Co., Illinois, and that part of said railroad from Mt. Carmel to Albion has heretofore been located and graded by the State of Illinois, and from Albion to Fairfield has heretofore been located and partly graded by said State: therefore the Alton, Mt. Carmel & New Albany line of railroad passing through the whole width of Edwards county on its route from Mt. Carmel to Fairfield, will thereat be joined to and there connect and intersect with the Belleville & Fairfield Railroad by said conjunction, connection, intersection of the Belleville & Fairfield Railroad with

the Alton, Mt. Carmel & New Albany Railroad at or near the town of Fairfield, it will constitute, conclude and continue the *elongation, junction* and *extension* of the Mt. Vernon Railroad through and along the length of the Belleville & Fairfield Railroad, and thence from Fairfield to and through and along the length of the Alton, Mt. Carmel & New Albany Railroad, *thereby creating and constituting* an extension of the Mt. Vernon railroad, all the way from the town of Mt. Vernon to Jeffersonville opposite the city of Louisville, Kentucky, and *by reason of* and *through* the aforesaid *junction, connection* and *intersection* of the Alton, Mt. Carmel & New Albany Railroad with the Belleville & Fairfield Railroad, and through and along the line of the last mentioned railroad to the town of Mt. Vernon, *thereby forming* a *complete junction, connection and intersection with* the said Mt. Vernon Railroad, *the county of Wayne becomes duly, legally* and rightfully *authorized* and *empowered* by the *provisions* of the said Mt. Vernon Railroad charter to apply, appropriate, use and *donate* all the unsold swamp and overflowed lands belonging to said county for the use and purpose of *aiding in the construction* of the Belleville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad *across* the limits of said Wayne county. And whereas furthermore the charter of said Alton, Mt. Carmel & New Albany Railroad Co. to construct a branch of said road to Illinoistown opposite the city of St. Louis in Missouri, and long before the Legislature of Illinois had passed the "Mt. Carmel" and the "Belleville & Fairfield" Railroad charter, the Board of Directors of the Alton, Mt. Carmel & New Albany Railroad Co. had passed a resolution stating and fixing the location of the line of the said branch railroad, to run from Fairfield through the town of Mt. Vernon, Nashville and Belleville to Illinoistown opposite St. Louis: and for the reason and by and through the means of the aforesaid prior location of the said railroad through the aforesaid towns along the very same line and routes, and previous to the passage of the charter of the Mt. Vernon Rail-

road, and of the Belleville & Fairfield Railroad, the most intimate and perfect junction, connection and intersection will be effected as well as the mutual elongation, extension, union and consolidation of the Mt. Vernon Railroad with the Belleville & Fairfield Railroad, and also with the Alton, Mt. Carmel & New Albany Railroad will be secured and thoroughly united with each other, thereby constituting one continuous air line railroad from Jeffersonville in Indiana to Illinoistown in Illinois, commonly designated the Louisville & St. Louis Air Line. *And for all these reasons*, and by virtue of the aforesaid *junction*, *connection* and *intersection*, *extension*, *consolidation* and *union* of the *Mt. Vernon Railroad* with the Belleville & Fairfield Railroad, and also with the Alton, Mt. Carmel & New Albany Railroad, *as hereinbefore described and set forth*, the aforesaid *county of Wayne is* thoroughly entitled and *lawfully authorized* and *empowered by* and *through* the *provisions* of the said 10th Section of the Mt. Vernon Railroad charter to donate all the swamp and overflowed lands of and belonging to the said county of Wayne for the purpose of aiding in the construction of the said Belleville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad, running from West to East through and across the whole width of said Wayne county." * * * *

"Now therefore in consideration of the premises the County Court of Wayne county, Illinois, at a special term of said Court held in the Court House at Fairfield this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, pass and ordain an order of the Court to make, execute, sign and seal and deliver the following Deed of Trust with the *foregoing preamble hereunto annexed and made a part of said* DEED *explaining the conditions thereof and therein contained.*" * * * *

Witnesseth "that the party of the first part in consideration of the premises above recited and hereunto annexed, and exhibited on the foregoing twelve pages, and in pursuance of the

authority vested in said Court by the aforesaid Act of the Legislature of Illinois entitled "An Act to incorporate the Mt. Vernon Railroad Co.," approved February 15th, in the year of our Lord one thousand eight hundred and fifty-five; and also in pursuance of the authority so vested in said County Court by virtue of and in accordance with a vote given by the legal voters of said Wayne county at an election held on the 6th day of November in the year of our Lord one thousand eight hundred and fifty-five as heretofore set forth."

Upon these recitals of facts and laws under which the County Court claimed to act, and made this deed to Charles Wood to aid in building a railroad line through Wayne county under the Mt. Vernon Railroad charter, we will first specially call the attention of the Court to the construction put upon the 7th, 8th, 9th and 10th Sections of that charter *by Wayne county itself* in these recitals on pages 428 and 9 of the Record. By these recitals the county derives the *power* to make the donations from these sections, *without* any *connection* in *fact* of the two roads—using and understanding the language of the 10th Section "may be joined," etc., in the future tense potential mood—capable of—so located as to be joined—as is done in the two charters at Mt. Vernon, and as we have in our argument, construed the true intent and meaning to be.

This view of the meaning put upon this charter by the defendant, and these admissions in the recitals of the *then existence* of all the facts under that charter, to raise and communicate its powers to Wayne county is recognized and confirmed. The Legislature expressly recognized and confirmed this deed and donation and all the facts recited in it, by the act to amend the charter of the Belleville and Fairfield Railroad, passed on the 14th of Feb. 1857, and which we will set forth in our argument.

We will here call the Court's attention to another fact.

After this remedial, enabling and amendatory act sanctioning and confirming all that the county had done to encourage and aid the Bellville and Fairfield and Alton Mt. Carmel and New Albany Railroad Companies to proceed to and with the construction through its limits, and finding no steps taken by these roads towards building it for these lands in the condition the title then stood in Charles wood in trust, the Court directed Mr. Wood to re-convey them to the county, which he did on the 22d of August, 1857 (See Record p. 445, 446), so that the county could convey, mortgage, or use them in some other more available way that would afford the "aid" it was empowered to give. When so re-conveyed to the county, the trust remained, the county succeeded as trustee and became liable and undertook as trustee to execute the trust designated by the law and the votes of the citizens. As the corporate authorities of the Bellville and Fairfield Railroad Co. did not proceed to the construction, the County Court did so for them, or for the voters of the county; and accordingly to carry out the trust and make a road through the county, it entered into the building contract with Vanduser Smith, & Co., of 19th November, 1858, and it covenanted therein to procure the use of the St. Louis and Louisville Railroad charter, to cover and aid in building and operating it. The same contractors or railroad builders, Vanduser Smith & Co. having previously taken a contract to build the Mt. Vernon Railroad, and having acquired the control of that charter by becoming its stockholders and directors, (See Record p. 286 to 307) they assigned the building contracts to the Mt. Vernon Railroad Co., and to raise means to prosecute the construction under both contracts and in both counties, adopted the policy, on consulting with Wayne county, of issuing the construction bonds of the Mt. Vernon Railroad for $800, 000, and secured them by a mortgage of all its property and franchises.

Wayne county had bargained to give $500,000 for building the road through it to Mt. Vernon, payable in these swamp

lands at $5 per acre, as the work progressed. As a means of raising money on the swamp lands without absolute sales to pay as the work progressed, and by preserving them until their value could be enhanced by a finished road, Wayne county consulted and agreed with the Mt. Vernon Railroad Co. that the bonds should be divided and the proceeds applied to the work or road lying in the respective counties, and on her part she would *add* as a further security for the payment of the Bonds, a mortgage and Deed of Trust of her swamp lands. By this arrangement the value and saleability of the Bonds would be enhanced in the market, and the swamp lands could be reserved from sale until the completion of the roads. This arrangement was carried out by the execution of the deeds sued on, and the contract to deposit $400,000 of the bonds with Ira Hersey for the county, (See Record, p. 322, 323, 324), and the trust deed to Seymour preserved the trust of these lands created by the deed to Wood. Thus the county vigorously pursued and took the steps deemed necessary to secure the building of so much of the St. Louis and Louisville Railroad line, as lies between Mt. Vernon and the eastern boundry of Wayne, and to execute and fulfill the trusts of the Wood deed.

This evidence is full and direct to the fact of a connection having then been made between these roads. We have the further corroboration of the same fact of a connection in the deposition of H. T. Pace, (Record, p. 403-4-5), of Dr. W. Duff Green, (Record, p. 406), of Norman A. Smith, (Record, p. 413, 414), and of Walter B. Scates, (Record, p. 392 to 396).

We now call the Court's attention to the provisions of the St. Louis & Louisville Railroad charter, and which fully confirms the creation and objects of these trusts. On the same day the Mt. Vernon Railroad charter was passed, that of the Belleville & Fairfield Railroad also passed. It made Henry Godeking and 17 others by name the corporators, and also con-

stituted them the first Board of Directors, and invested them with all the powers of the corporation until their successors should be elected and qualified. Section 6.

By Section 14, the city of Belleville, and the counties of St. Clair, Washington, Jefferson and Wayne were authorized to subscribe for stock, and to "hypothecate mortgages and other evidences of indebtedness due and owing to them, and arising from the sales of said swamp lands," * * * but not "until a majority of the legal voters of said counties have, at some general or special election, voted in favor of investing said swamp lands or the proceeds of the sales of the said swamp lands of their respective county or counties, in said railroad or roads." * * *

SEC. 16. Said Company shall have full power to cross, intersect, join and unite its road with any other railroad now or hereafter to be legally chartered, at any point on, or at either terminus of said line of said railroad authorized to be constructed under the provisions of this Act, with the necessary turnouts, and siding switches, and other conveniences, in furtherance of the objects of its connections, upon such terms as may be mutually agreed upon by the respective parties.

On the 11th of February, 1857, this charter was amended. The name was changed to "The St. Louis & Louisville Railroad Company," and the line extended from Illinoistown opposite St. Louis, to Jeffersonville opposite Louisville, by Belleville, Nashville, Mt. Vernon, Fairfield and Mt. Carmel. Amongst other provisions are the following:

"SEC. 4. The donation of lands which has heretofore been made by the county of Jefferson to the Mt. Vernon Railroad Company is hereby confirmed." * * * "The vote heretofore taken in Wayne county to donate the swamp lands of said county to the Belleville and Fairfield Railroad Company, and the Alton, Mt. Carmel & New Albany Railroad

Company, and the conveyance of said land by the County Court of said county, in trust for the use of said last mentioned Railroad Companies, be and the same are hereby declared to be legal and valid." * * *

"SEC. 5. Each county through which said railroad runs may donate the swamp lands of such county, or the proceeds thereof where the lands have been sold, to the St. Louis & Louisville Railroad Company, on such terms as the County Court of such counties may prescribe; such counties may also subscribe to the capital stock of said road an amount not exceeding $100,000, and may issue bonds therefor, or may levy and collect a tax to pay the installments on such subscription."

* * * * * * * *

"SEC. 6. All lands which have been or hereafter may be donated to said road, when sold on a credit, shall be subject to a lien for the purchase money, and shall be exempt from assessment of taxes until the final payment of the purchase money."

Here again we find full and distinct definite power given to these counties, Wayne included, to aid in building a railroad through them, by taking stock, issuing bonds, and selling their swamp lands for *any sort of securities* in their *discretion* that may further this object. Not only so, but we here find a *distinct recognition* of *all the facts recited* and set forth in the deed to Wood, and of the *power claimed* to be in the county in it, but also a full *confirmation* of the deed to be "*legal* and *valid.*" But the Act does not even stop with this; it goes on to provide that "*all lands which have been*, or *hereafter may be donated* to said road" "shall be exempt" from assessment for taxes until sold and paid for. This Act was in force at the time of executing the deeds sued on. The *policy* in view in *all these acts* was to secure the building of these lines of railroad, and the swamp lands of Wayne were particularly devoted by the vote to aid in building *that part* of the line lying in that county; the deed to Wood created a trust for this purpose;

the deed and trust to Wood was confirmed by the amended charter, and Wood's reconveyance *devolved that trust* upon the county by its County Court. The county, *to execute and fulfill it, adopted the plan* shown, by a *contract to build it for the lands*, and to *raise the money*, in the *first place*, by a mortgage of the lands by the deeds sued on. These deeds contain the following recitals:

"And whereas at a special term of the said County Court of the county of Wayne, held on the 28th day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the same Court, whereby a special election was ordered and directed on the 5th day of November, one thousand eight hundred and fifty-five, to be held for the purpose of taking the sense of the qualified voters of the county, upon the mortgaging of that portion of the overflowed and swamp lands hereinafter described, for the purpose of aiding in the construction and maintenance of the said the Mt. Vernon Railroad; and the County Court did then and there order a public notice of such special election to be given by advertisements in accordance with the Statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order. And the said County Court did prepare a proposition containing a brief, clear and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket, and presented to the said qualified voters of said county, to be used at such election, in the words and figures following, to wit: "For appropriating the swamp lands of Wayne county, as a *bonus* to any Company for building a railroad through said county." "Against the same." And the said special election was duly held, pursuant to said notice, on the said 5th day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said charter and the laws of the said State of Illinois, and the returns

thereof made, canvassed and published, in all respects as other county elections are required to be, in and by the said laws. And whereas the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" upon the said several printed propositions or tickets cast by them at the said election. And whereas upon the returns of said special election being duly made, canvassed and published as aforesaid, the County Court of the county of Wayne *did adopt* the proposition or plan having the highest number of votes as aforesaid, and did *order* and *adjudge* and *determine* to *execute a mortgage* in conformity to such proposition or plan, and to the provisions of this instrument, to the parties of the second part as trustee, upon the lands hereinafter described, for the purpose of aiding in the construction and maintenance of the said Mt. Vernon Railroad, which said order was *duly made in open Court* on the 20th day of April, one thousand eight hundred and fifty-nine. And whereas by virtue of the said several acts and proceedings, the parties of the first part *have become endowed* with the requisite *power* and *authority* to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said Mt. Vernon Railroad Company, and the said parties *deem it best for the public interest of the said county of Wayne* that the lands hereinafter described should be *mortgaged* to the party of the second part, *Trustee and Commissioner*, duly appointed and selected by both the said party of the first part and the said the Mt. Vernon Railroad Company, upon the terms and conditions particularly set forth. And whereas the Mt. Vernon Railroad Company has deemed it advisable to provide for the issue and disposal, now and hereafter, of its construction bonds, for the purpose of raising funds, from time to time, for the construction and completion of the railroad, and for the equipment thereof, and for the expense of organizing and operating the

same, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of such construction bonds and obligations in the just and full sum, in the aggregate of eight hundred thousand dollars, secured to be paid by their four hundred construction bonds or obligations of and for five hundred dollars each, and by their six hundred construction bonds or obligations of and for one thousand dollars each, to the extent of eight hundred thousand dollars in aggregate, to bear date on the first ————, one thousand eight hundred and fifty-nine, and be payable in fifteen years from the date thereof, which will be in the year one thousand eight hundred and seventy-four, at the Bank of North America, in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annualy at the Bank of North America, in said city of New York, on the first day of May and November in each year, to be secured hereby; all which bonds are to have warrants for the payments of the interest thereon attached." * * * "Full payment of the principal and interest of the whole issue of these bonds, is secured by a mortgage, bearing even date herewith, to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also [by a mortgage to said Isaac Seymour as Trustee, of said railroad, its branches and other real and personal property of said Company."

Here two things are noticeable and should be remarked by the Court. They recite the existence of the facts that give the power under the Mt. Vernon Railroad charter, and the fact that the power of disposal in this way is in the county. These recitals not only bind the party, but in law they operate by way of estoppel upon the defendant to gainsay or contradict them.

But secondly, the county, on the same day it makes this mortgage, and as a part of the same transaction executes a Deed of *Trust* of the same lands to Isaac Seymour as Trustee. Thus it transfers the *trust* it had created by the Deed to Wood, and received back by his reconveyance, and thus shows a perfect and vigilant *preservation* of the *trust* by requiring him to finish its execution by seeing to and enforcing the disposition made of the funds and lands by the mortgage.

Can this Court, in the face of all these facts and laws, say that this is not a good and valid execution of these powers and this trust? Or that the deeds are void? The Court below dismissed the Bill, simply on the ground that he did not find *a connection* made. He made no response to the various general and special Acts of the Legislature. We therefore regard the decision as made *pro forma*, to enable us to bring the case before this court.

III. There was, in fact and law, in a just sense, an actual connection of the Mt. Vernon Railroad with a railroad extending from Mt. Vernon eastward to, and through Wayne county; or to express it differently, the Mt. Vernon Railroad was extended eastward to the same extent; or to express it still differently, the Mt. Vernon, the St. Louis and Louisville, and the Alton, Mt. Carmel and New Albany Railroads were all connected or consolidated *pro hac vice*, that is, so as to afford a road consisting of several connected links traversing the whole length of Jefferson and Wayne counties from east to west. We do not mean by this, to state that these roads, or that any one of them was actually completed, or that any running arrangement was established between them; but what we mean to say is, that one or more of them was pushed to a stage of practical completion throughout the extent of Jefferson and Wayne counties. For the proofs see Wood's deed, and depositions of Grant, Scates, Smith, Pace, and Sursa. Angus N. Grant, one of the witnesses states in his first deposition that he has been

secretary of the Mt. Vernon Railroad Company at Mt. Vernon since May 30th, 1859. (Record, pp. 282, 336, 346, to 359). That Gustave Waggoner, engineer of the company, commenced the survey and location of the route of the road through Wayne county in the fall or winter of 1858; that L. J. Germain succeeded Waggoner, and in the spring of 1859 made another survey, *definitely locating* the *route* of the road from Ashley to or very near the eastern border of Wayne county, and both he and F. M. Sursa, who was employed with the engineers, testify that a great deal of work was done. The line was chopped and grubbed out—bridges and culverts were constructed, and ties delivered along nearly the whole length of the line. (Record, 360 to 361). Germain's official report of this survey and location, with a profile draft of the same, is also in evidence. (Record, pp. 346 to 349). And let it be borne in mind that all this was done under and in pursuance of the contracts between Wayne and Jefferson counties respectively, and Vanduser & Co. Here then we have a road practically if not entirely completed —a considerable amount performed at considerable expense, and all in pursuance of a common design—the accommodation of Wayne and Jefferson counties with a railroad. Is not this a substantial compliance with the conditions imposed by the statute? Is it not a substantial connection of roads? Is it not an evidence of good faith? Is it not ground for equitable relief? Are not the holders of the securities, upon the faith of which the moneys were raised to meet their expenses, in reason and right as much entitled to indemnity as if the road had been actually completed? Are not the lands pledged as a fund for the redemption of those securities, and for the re-imbursement of those moneys, answerable *in foro conscientiæ* for that purpose? But then again, there was in fact an agreement or arrangement between the boards of directors of the Mt. Vernon and St. Louis and Louisville Railroad Companies for a *connection or junction* of these two roads. This connection is shown by the deposition of W. B. Scates, (Record, pp. 377 to 399) of H. T. Pace, (Record, pp. 403, 405) of N. A. Smith, (Record, pp.

410 to 415) and W. Duff Green, (Record, p. 406), Scates, as director in the Mt. Vernon, and Pace as director in the St. Louis and Louisville Railroad attended a joint meeting of the two Boards held at Mt. Vernon in the spring of 1855 or 1856, for the purpose of forming a connection or junction of the lines of the two companies, under and according to the 10th section of the Mt. Vernon Railroad charter; and a connection was formed by joint resolution of the directors of the two roads. Both companies were fully organized at the time. The object of a connection was two-fold, viz.: to save the St. Louis and Louisville Railroad from building about 17 miles of the line, from Ashley to Mt. Vernon, which the Mt. Vernon Railroad was authorized to build; and secondly, to communicate the powers of the 7th, 8th, 9th, and 10th sections of the Mt. Vernon Railroad charter to the counties of St. Clair, Washington and Wayne, to enable each like Jefferson to *aid* in the construction of one or both Railroads under the provisions of the Mt. Vernon charter. And the object of a further connection of the two roads with the Mt. Carmel and New Albany Railroad was to communicate the same powers to Edwards and Wabash Counties, to extend the line through the State to Mt. Carmel on the Wabash River, and to secure the right of way and grading done on the last road in aid of the construction of the whole line from St. Louis to Mt. Carmel, traversing the State from west to east through the counties above named. These were the objects in forming a connection, junction or intersection of these lines of roads, and these roads all agreed to, and did form such connection, junction or intersection, as is shown by the depositions referred to before and by articles of agreement, offered in evidence by defendant, (Record, pp. 593 to 603), between the Alton, Mt. Carmel and New Albany Railroad Co., and the St. Louis and Louisville Railroad Co.

In addition to the above evidence of connection, &c., the defendant, in the Deed of Trust of these swamp lands to Charles Wood above mentioned, (Record, p. 416 to 443), for the pur-

pose of aiding in the construction of any railroad through that county, has expressly recited and admitted such connection, junction or intersection of all three of the above railroads. We call the special attention of the Court to the recitals in this Deed; for they are full and explicit to all the facts of connection, and explicitly derive therefrom power under the charter of the Mt. Vernon Railroad to donate the swamp lands of Wayne county to *aid* in *constructing* a railroad through it. Besides we call the attention of the Court to this Deed, to show that the county construes the 10th Section as we have construed it, in relation to the kind of connection contemplated in the Section. We have thus shown beyond all doubt a connection, and, as we think, within the true intent and meaning of the 10th Section. It is true this has not been shown by producing the original minutes of the meeting of the two Boards; but we have shown a full and thorough search for the minutes, and a book in which we supposed they had been entered; and that neither the minutes or book can now be found. The connection was made in 1855 or 1856, and in the absence of the original minutes of the Boards, we have proved the *fact* of a *connection* by Scates and Pace, a Director in each Company who were present and assisted as Directors in making the connection; and the defendant fully recites the fact and the objects of it in the said Deed of Trust to Charles Wood, made on the 13th day of March, 1856, and claims to derive the power, at that time, to donate the swamp lands, from the 10th Section, by virtue of that connection. (See Record, p. 434). The *fact* of connection by *agreement* by resolutions of the two Boards of Directors, is surely all that is intended or required by the 10th Section, which merely contemplates the enabling of counties to give *aid* in *constructing*, and a communication of power to counties that they may give such aid before roads are built. We do not feel called upon before this enlightened Court to discuss the question of our right to prove the *fact* of a connection by witnesses, after having shown the loss of the original minutes of the proceed-

ings of the two Boards at this meeting to form a connection; nor to sustain the relevancy or sufficiency of the defendant's recital and admission of the *same fact* of connection in the said Deed of Trust to Charles Wood. For in that deed defendant claims to derive power to donate these lands, from the 7th, 8th, 9th and 10th Sections, and the *fact* of a *previous* connection as provided in the 10th Section, and confirmed as shown by the Act of 1857.

Again on this branch of the evidence by recital and admission of defendant, we call the particular attention of the Court to the recitals of the Deed of Mortgage and Deed of Trust sued on, and we ask the Court to note and remember the recitals and admissions in these Deeds and confirmatory Act, and the estoppel upon the defendant. (See Record, p. 244). Certified copies of the orders of Wayne County Court will be found on pages 378-9, 280 and 301 of the Record, and those for the election upon the proposition on pp. 275 to 277 of the Record.

The Act expressly confirms the donations already made of swamp lands by Jefferson and Wayne counties, and authorizes any future donations of such lands by any county through which it may run. The power is therefore derived under this Act as well as under the charter of the Mt. Vernon Railroad, and the actual connection made by the two Boards of Directors. The Deed to Wood is signed by the County Judges just as are the Deeds now in suit, and this Act confirms that mode of execution as well as all that had been *previously* done, while it authorized future and similar donations. If there was no more, this is enough *in foro conscientiæ* in equity, to raise and sustain an equitable right in purchasers of bonds under it.

But we have other legal sources of power in the county to convey its real estate, and leaving the consideration to its discretion, i. e. by gift or donation, where, in this case, public interests were to be promoted by the construction of a railroad through the county. There are too many instances of these

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donations in the United States sustained as such by this Court, to allow a question to be raised as to the sufficiency of the consideration or motive. By general Revised Laws of 1845, hereinbefore referred to, the County Commissioners were empowered to execute all deeds for real estate, (Gross, p. 109, Sec. 40), and the County Commissioner's Court were empowered to appoint a Commissioner to sell and dispose of and to convey any real estate of the county, and this conveyance is declared valid. (Gross, p. 159, Sec. 3). The County Court is also empowered to sell and convey any lands when it may become necessary. (Gross, p. 161, Sec. 19). These provisions are in the general statute laws of the State, and are still in full force, and also the Act of 14th February, 1859.

Thus we show full power and authority for these deeds both by the general and special laws of Illinois. These Bonds pass by delivery like commercial paper. To deny their validity or that of Deeds securing them, for want of power, under all this array of accumulated authority would shake confidence, and the bond markets in financial circles to their foundations. We have shown that the Mt. Vernon, and St. Louis & Louisville Railroads united, connected and intersected by resolutions of their Board of Directors in the spring of 1855; we have shown that the County Court of Wayne ordered and held an election under the Mt. Vernon charter, and adopted a plan of disposing of her swamp lands as a bonus to any Railroad Company that would build a railroad through the county, in November, 1855; we have shown that the County Court conveyed these lands, in pursuance of the vote and Mt. Vernon charter, in March, 1856, to Charles Wood in trust for that purpose, and *admitted* in the recitals of the Deed all the facts necessary to confer the power, and claimed and asserted its existence in the county to do so. We have shown by the recitals in the Deed sued on, and the orders of the County Court thereupon that the County Court had the power to make these conveyances, and that the defendant is now *estopped* in law to deny

the facts so recited; we have shown that these recitals were authorized, as to power, by the Act of 1857, amending the St. Louis & Louisville Railroad charter, and by the general laws and by the general Act of 1859, conferring powers to sell and convey real estate and these swamp lands; and the defendant has shown by the agreement of consolidation of the Alton, Mt. Carmel & New Albany and St. Louis & Louisville Railroads, the same general powers of disposition in the county. But we are not done yet with the proofs. We now call the attention of the Court to subsequent acts of *confirmation* by the county and its officers and in execution of these contracts.

At the April term of the County Court the presiding Judge, Samuel J. R. Wilson was appointed a commissioner to act as attorney for the trustee in the deeds sued on. (Record, pp. 278, 279, and 281). On the 27th of April 1859, the Mt. Vernon Railroad Co. entered into a contract to place $400,000 of the bonds, one-half of the $800,000 issued by it, in the hands and custody of Ira Hersey, to be kept and disposed of under the control of the county, the proceeds to be applied to the building of that part of the line lying in Wayne county. (See Record, pp. 322, 324.) These bonds were delivered to Hersey as custodian for the county, June 20th, 1859. (See order of Casey and receipt of Hersey, Record, pp. 325 and 326). Afterwards on the 14th of December, 1859, the County Court appointed the Chief Judge of the Court, Samuel J. R. Wilson, its agent to take the bonds from the custody of Hersey and keep them in the custody of Wayne county, until some person mutually satisfactory to the county and Railroad Co. should be selected as custodian. (See Record, pp. 327, 328). June 18th 1860, Wilson received the bonds of the treasurer, Charles W. Lewis, and then deposited them again with Lewis as custodian. (See their receipt, Record, pp. 329, 330). This was done in New York city. Afterwards, Wilson directed Lewis, from Fairfield, Illinois, to dispose of the bonds. This is the

last we hear of these bonds until they are produced in this case. Hersey's receipt for the bonds shows that he got 300 bonds of $1000 each numbered consecutively from 300 to 600. These we can trace by these numbers. The 200 $500 bonds we cannot, as no numbers were specified in the receipt. All these bonds that have been disposed of were so disposed of by Wayne county, the defendant and its agents, and the proceeds went into its or their hands. We can trace by their numbers and identify $73,000 of them in this suit. Thus the county, by its court and its agents, have time and again, subsequent to the date of the mortgage and Deed of Trust in this suit, recognized and confirmed their Deeds—have acted under—received half of the Bonds secured by these Deeds—sold them and received the money for them from these complainants, and now, in contradiction of the recitals in their Deeds in suit and the Deed to Charles Wood, say there was no power to execute them, and even if there was that it was not executed by the proper party or officer of the county. Can law, equity, justice or common sense allow such a defense to prevail under such proofs and circumstances?

Thus we have shown that half the Bonds and means provided for by the issue and secured by the Deeds sued on were in the hands and under the control of the county. Yet the defendant resists our recovery, because we do not show that the road was completed, and an operating, running connection formed with the St. Louis and Louisville line at the time the deeds sued on were made. We have shown that the true meaning of the 10th Section did not require this. The provision authorized "aid to be given," "in the construction," not after construction. But now we propose to call the attention of the Court to proofs showing conclusively that the defendant's default did then suspend the prosecution of the work, and has prevented its resumption ever since. By the terms of the contract with defendant for building the road, it agreed to procure the right of way, depot grounds and the

St. Louis & Louisville Railroad charter, or some charter for the contractors and free of cost to them. (See Record, p. 16). This contract was assigned to the Mt. Vernon Railroad Co. It issued these bonds, (Record, pp. 299, 306 and 7), it surveyed and located the line, (Record, pp. 346 to 349), cleared off the timber, delivered a large quantity of ties along it and graded part. (See Sursa's Dep. and Grant, Record, pp. 360-1, 343-4-5), and purchased part of the rails. (Record, pp. 449 and 454). This was as far or farther than it was safe to go without a right of way or a charter under its control in Wayne county. Neither has been furnished to this day. (Record pp. 344-5). Wilson directed Lewis, in the letter above referred to, to raise money on the bonds in his hands to defray expenses of procuring the charter. (See record, p. 331). These funds were not to be chargeable with that expense. The right of way and charter were to be furnished under the building contract free of expense to the contractors and Mt. Vernon Railroad Co. as their assignee. Yet the defendant still fails to furnish a right of way on the located line, or a charter enabling the contractors or assignee to condemn the lands for one in that county, and for depots, and it still withholds the proceeds of the $400.000 of bonds put into its hands, both from the Mt. Vernon Railroad Co. that it may proceed in building the road under the contract, and the money from these complainants, who bought these bonds of it and paid it their price in open market to which this defendant carried these bonds for sale. And now after getting up these bonds in a marketable condition by the deeds sued on, after taking them into open market, there representing them as genuine and valid. (See Wilson's letter of May 1st, 1861, Record, p. 334. Lewis' letter to Whiting, attorney to the trustee, and certificate to Seymour, the trustee, dated May 1st, 1861, Record, 332, 333). Eighty of these bonds for $1000 in this letter are part of the bonds put into the custody of Wayne county, and no doubt the $500 bonds in the list here given are part of the 200 of that denomination in like manner put into its control. Even down to May

1st, 1861, we find the defendant, by the county Judge, Wilson, still recognizing, confirming, acting under and carrying into operation these bonds under the deeds sued on. But as soon as the bonds were all sold, and the money was safely in the county treasury, or the hands of its own agents and custodian, the defendant and its advisors, agents and company turn upon the innocent purchasers with the discovery that there has been failures to build the road—some fraud somewhere. The purchasers, it virtually insists, should have seen to it that their purchase money was applied, that the county had power to make the deeds, and that the right officers executed them. And after all his agency and activity in getting up this business for the county, and negotiating the $400,000 placed with the county, running from September, 1858, to May, 1861, Wilson now has the effrontery to come into court and swear that he always believed the transaction void, that it was not done in open court, and that he was acting for the Railroad Co. and not for the county; thus contradicting the records of his own County Court, (See Record, pp. 278, 280, 327), contradicts his own recitals in these deeds, (Record, pp. 190–275), forgets all his letters and acts in behalf of the county, (Record, pp. 332, 333, 334), and contradicts the deposition of Grant (Record, p. 285,) and Smith, (Record, pp. 410, 415). See Wilson's evidence on trial, (Record, 532½ to 575), and his deposition read by defendant, (Record, pp. 585 to 590). If Wilson, as County Judge and an honest man, thought the deeds were void, he should have warned the public against purchasing them. But on the contrary we find him doing all he can to effect the sale of these Bonds from 1858 to 1861. He gets the custody and control of $400,000 dollars of them for the county, changes the custody from Hersey to Lewis, and directs Lewis to negotiate them and to deliver part of them to Davis to negotiate, and when $153,000, which we are able to trace as a part of them, have been sold to the parties in the suit, and to others set forth on page 332 of the record, the defendant now defends against a foreclosure, without returning a single bond or accounting for

a single dollar of proceeds, and puts this same paragon of a County Judge and agent upon the stand as a witness to swear to his opinion that all he had done was without authority, and void, and on the stand as a witness to contradict his acts on the bench, and the records he made as a Court. If neither facts, justice, nor law can *estop* such a witness, we suppose the Court must weigh his statements.

Equity does not measure right and justice simply by a pecuniary standard, but by the standard of morality, and conscience of however little value may be the right; yet if it be a right, it is upheld and enforced as a principle. It follows therefore upon every equitable ground that the complainants are as much entitled to relief as if their claims were founded upon and commensurate with the cost of a completed road. The opposite view that in opening a road without the actual completion of the road there was no real connection, and without such connection there was no liability of the fund, would make the creditors of the fund insurers of the success of the enterprise, and upon such terms no one would have loaned their money to aid it, and thus the fund, as we have shown in a previous part of this argument, would have been unavailable for the purpose in hand, of giving *aid* in the construction. There is neither a principle of law or equity, nor is there a commercial or financial usage that requires a purchaser of negotiable bonds, passing by delivery without assignment, to follow and see to and become responsible for the application of the purchase money.

It is further objected that if the deeds are not void for want of a connection of roads, yet they are void for want of a compliance with another condition fundamental to the power authorizing their execution. That condition is the precedent election authorized and required by the 9th section of the act incorporating the Mt. Vernon Railroad Company. At the risk of repetition, let us re-state the facts. That section, as we have seen, required that a distinct proposition or plan for disposing of the swamp lands should be submitted to the qualified voters of

Wayne county after due notice, and approved by a majority of all the votes cast, before the proposed disposition could be made. It is contended that this was not done, that the proposition so submitted was not a distinct one, not one having reference to any particular road, but a general one designed to elicit the sense of the people upon a question of public policy —upon the question of disposing of the lands at all, in aid of railroads. This is an assumption or begging of the question in controversy, rather than an argument. The proposition or plan here referred to in the language of the section has reference to the "mode" or "modes" of aiding in constructing a road, and not to the road itself by name or description. It is mandatory as to the manner, and not as to the object of the application of the swamp lands, provided the object be a railroad. Hence if a proposition was in fact submitted to the qualified voters of Wayne county, and the proposition was distinct as to the mode or manner of such application by donation, mortgaging or otherwise disposing of the lands for such purpose, and the other formulas presented by the section were complied with, and upon such conditions the proposition was approved by a majority of their votes, the requirements of the section were satisfied. Now what are the facts relating to this point as shown by the evidence? The certified copy of the record of the Wayne County Court, *quo ad hoc* show that on the 28th of September, and again on the 13th of October, 1855, an election was ordered by the County Court for the 5th of November of the same year for the purpose of taking the sense of the qualified voters of the county upon the following proposition, viz.: "For appropriating the swamp land of Wayne county as a bonus to any company for the building a railroad through said county." (See Record pp. 275, 276; 242, 243; 192, 193). That the election was accordingly held after due previous notice of the same, and 831 votes were cast in favor of the proposition and 256 against it, the majority in favor of it being 575. Afterwards on the 13th of March, 1856, the County Court, (see Record, p. 433), upon and in pursuance of the authority immedi-

ately conferred by this election, made and entered an order of Record, authorizing and directing the Judge of the County Court and his associate to execute a deed of trust of the lands in aid of the construction of any railroad through the county, which was accordingly done on the 13th of March, 1856, Charles Wood being the trustee. Opportunity for the application of the lands for that purpose failing, Wood on the 27th of August, 1857, re-conveyed the same lands to the county, (Record, pp. 445, 446), The recitals contained in the Deed to Wood will be hereafter again noticed as affording valuable and interesting evidence upon other points involved in this argument. The County Court still continuing their efforts, afterwards, as we have already seen on the 19th of November, 1858, entered into a contract with Vanduser & Co. for the construction of a railroad from Mt. Vernon to the eastern border of Wayne county (Record, pp. 168 to 184), and on the 20th of October, of the same year, Jefferson county entered into a similar contract with the same company to construct a railroad from Mt. Vernon to Ashley. (Record, pp. 148 to 166). Subsequently on the day of December, 1858, the contract of Wayne county with Vanduser & Co. was formally ratified and approved by the Wayne County Court. (See Record, p. 168). On the 19th and 21st of April, 1859, the Wayne and Jefferson County Courts respectively made and isssued certificates advising all whom they might concern, that the swamp lands of each of said counties was unincumbered, and on the next day, April 20th, Wayne county executed a deed of mortgage and a deed of trust, respectively, conveying to Isaac Seymour her swamp lands to secure the payment of the construction bonds of the Mt. Vernon Railroad Co. already mentioned, also dated April 20th, 1859, (see Record, pp. 190, 239), and the Mt. Vernon Railroad Company executed a mortgage of the same date of the road and franchises of the company to the same person for the same purpose.

Here we have the evidence of at least a substantial compliance with the precedent condition of an election insisted upon

by the opposing counsel as fundamental to a proper exercise of the power of disposal. Is it not conclusive? What more should be required? But if it were true that this condition was not in all respects strictly observed, yet would the fact be fatal? By no means. Statutes are either directory or imperative in their terms. They are directory or often so in respect to the mode or manner pointed out for effecting an object. They are imperative in respect to the application of the object itself. The mode or manner may be departed from, or varied *non constat.* The object may have been effected, and often when so the law is content with the result, clothing it with its sanction and giving it entire validity. Is not this rule applicable here? Here was an election which was the substantial material thing filling the reason and policy of the enactment. All else was merely formula with or without which the fact accomplished would stand, and such is the doctrine of the books. The proposition and plan submitted was clear, distinct and definite, viz: a donation of these lands as a *bonus*; and the people voted on and adopted it. Nothing could be more simple or definite as a plan. It could have no details—a bonus to *any* company that would build a railroad through the county, and this bonus under the law was to be made to "aid in construction" of it; to be made before not after it was built, and these Deeds are within the plan of disposing of them as a *bonus*, a prudent and cautious security towards raising money as "aid," instead of a conveyance in fee to and sale by the contractors.

Conceding the power, however, yet it is objected that the deeds are defectively executed and are therefore void. This objection stands upon a technicality. The defect imputed is that the deeds were executed by the Judge and his associate, whereas they should have been executed by the Clerk of the County Court. Allow us to examine this objection. We insist, first, that a County Court under the system of polity obtaining in Illinois, is inherently possessed of power to make a

grant of real estate belonging to the county, and being possessed of the power, may, as incidental to it, make it in such way and by such agencies as may be consistent with legal solemnity, and as they may approve for that purpose. The argument before made, elucidating the nature, functions and ends of counties as municipal corporations only inferior to the State itself, and their lawful capacity as such to provide roads and other agencies and accessions to supply the necessities of their constituent members, will apply with equal, and as we think with conclusive force in support of the present position. Hence we conclude that the Act of the General Assembly of Illinois providing that "the County Commisioners' Court" (now the County Court), may by their order to be entered on their minutes appoint a commission to sell and dispose of any real estate of their county, and the deed of such Commissioner under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes to convey to the purchaser or purchasers all the right, title, interest and estate whatever that the county may then have in and to the premises so to be conveyed, is simply declaratory of what was pre-existing law. Gross' Ill. Stat., p. 147, Tit. Counties and County Courts, Ch. 27, § 3; also, pp. 525-6-7, Tit. Prob. Judge, Ch. 85.

But if it were otherwise, still their acts not only validate the deeds in question, but free them from all technical objections. They do this, because Samuel J. R. Wilson and Thomas M. Scott, the grantors, although Judges of the Court, were duly appointed and empowered, by its order entered of Record, to execute them and under such appointment in fact stood in the relation of Commissioners for that purpose to the Court. (See Record, pp. 278 to 281).

Again they are valid, because the 7th Section of the Act incorporating the Mt. Vernon Railroad Company, constituting one of the sources from which we derive authority for their

execution, expressly vests in the *County Court;* not in the *Clerk* but in the Court such authority. It is couched in these terms: "The County Court is authorized to subscribe for capital stock, and to issue bonds and to provide for the payment of the principal and interest by *sale* or by *mortgage* or by *both* of the *swamp* and *overflowed* lands, &c. What could be more explicit? The County Court is authorized by sale or mortgage, &c. The authority carries with it the means necessary and proper in order to its execution—a conveyance falls within the description of such means, and therefore the Court not as a legal or ideal entity, but as a personal entity, consisting of its members, may, as in this case, execute a conveyance. The authority is without limitation or restriction as to agencies, unless indeed the authority is limited to the Court itself in its *personelle* as mentioned, and if so, we are still within its letter as well as spirit, these deeds having been executed by Samuel J. R. Wilson as County Judge and Thomas M. Scott as Associate Judge. The only refuge from this argument is sought in a subsequent general law. The Act must be taken as a whole and construed and given effect to accordingly. Again, is it true that the Act makes the execution of such conveyances by the Clerk necessary in all cases? We deny it. The language of the Act in this connection is, "The purchaser, &c., shall be entitled to a conveyance, &c., executed by the Clerk," &c. Mark the phrase! It is that the purchaser *shall* be entitled to a conveyance; not that the Clerk *shall* execute it. Evidently the provision was conceived in the interest and convenience of the grantee. It gives him an additional right, the right to demand of the Clerk a conveyance executed by him. It saves him at his discretion the trouble and delay of soliciting and waiting the action of a periodical court in a matter affecting his interest. Or at his option he may demand the execution and delivery of his conveyance by the Court through its Judges or Commissioners or by the Clerk. Our opponents further insist that the general law of February, 1859, authorizes the County Courts to sell but not to mort-

gage the swamp lands. Is not this a distinction without a difference? Undoubtedly the power to mortgage is included within the power to alien absolutely. It is the minor as compared with the major proposition. It may exist without the power of absolute alienation, but not *e converso*. Such we lay down to be the general law in ethics, in logic, in mathematics and in jurisprudence. It is further asserted that the order appointing and empowering the persons executing the deeds to do so, was not made in open court but at a private house, and that therefore the deeds are void. How stands the evidence on this point? N. A. Smith swears it was done in open court. (Record, p.). The order on the Records of the Court shows the reverse. It shows that it was made in open Court, the Judge and his associate being present, and so the Clerk, and the time, place and date of making the order, and due authentication of all this appears. On the other hand the Judge says, or intimates, that it was made at a different time and place, and not in open Court. Which is to be believed? The record—a solemn judicial record which the law regards as the highest evidence, and as almost absolute verity, or the dim and distant recollections of a witness impeaching his own official action and stultifying himself? The rules of evidence settle this question authoritatively. 1st, they make the Record conclusive; 2d, they make parol evidence inadmissible to impeach it, except upon an allegation of fraud, not appearing in the defendant's answer. Hence our objection to such evidence upon the hearing. Admitting however such evidence, what is the escape from another and subsequent order of the same court upon the same subject, also read in evidence? We allude to the order made at a special term on the 20th day of April, 1859, reciting, ratifying and approving the execution of the deed. Is it too, to be discredited, because the order preceding it is orally contradicted. Our opponents do not say so, but they seek to discredit it on another ground, because of the variance of the date of the recording of the deeds as recited in the order, and as endorsed by the Recorder upon the back of

the deeds. This is a fine point, showing our opponents are hard pressed and are ready in despair, as drowning men, to catch at straws. It is a quibble rather than an argument, and may be answered in several ways. 1st, the order as a judicial act is unimpeachable except for fraud which is not charged; 2d, the order and the deeds mutually corroborate each other as to the substantial material fact of the execution of the latter; 3d, the variance as to the date of the recording of the deeds is void of legal or equitable effect as between the grantors and their grantees and *cestui que trusts*. In other words the deeds would be as efficacious between the parties to this suit without being recorded as with it. So far the question of form or manner has been contested upon a field chosen by our adversaries, upon their own selected proofs; but extending our view of the evidence, what do we find? Unfortunately for our adversaries their previous and solemn admissions sap their defense and in fact turn their weapons upon themselves. Out of their own mouth are they condemned. Prior to the execution of the deeds in question, the Judges of the Wayne County Court execute a deed to Charles Wood, conveying the same lands in trust in aid of the construction of a railroad, in fact if not nominally, the same road before mentioned, and the prospect then failing, Wood in turn re-conveyed the lands to the county, but it will be remarked that the deed to Wood contained many recitals. (See Record, pp. 421 to 430). Again in the mortgage executed by the Judges of the same court the facts and power are recited. (Record, pp. 191 to 197). Again in another Deed of Trust executed by the same Judges on the first part, Ira Hersey on the third part, and the Mt. Vernon Railroad Co. of the second part, touching the disposition and division of the bonds mentioned, it is recited. (See Record, p. 322 to 323). Again, it is in evidence, that the County Court appointed and empowered Wilson to change the depositary of the bonds specially devoted as a fund for the construction of the road afterwards located and partially constructed through Wayne county; and that he did so, which is

the last we heard of these bonds until they were put in circulation. Wayne county paid nothing for them. Again a contract for the purchase of iron signed by the Mt. Vernon Railroad and Jamison, Newcomb & Elliott was read in evidence, showing that bonds were hypothecated to raise money to pay for the iron.

Again Hodges proves that he purchased his bonds upon the recommendation of Wilson, then Judge of the Wayne County Court. Thus in the order of this argument we have first generalized the objections made to the relief prayed under two heads. 1st. The invalidity of the deeds because of the want of power to execute them. 2d. Their invalidity admitting their power, because of their execution by an improper agency. Next we have shown or attempted to show these objections to be unfounded both in the evidence and in the statutes relied on by our opponents, and now we come to close what we have to say on their points of the evidence by applying a general and familiar principle of law, which appears to us to be conclusive upon them. And here, that we may be clearly understood, and that our argument may pass for what it is worth upon these points, we beg to recapitulate all the objections which have been made either as to the existence of the power in question or as to the mode of executing it. These objections are

1st. That the conditions of election upon the question of donating the swamp lands prescribed by the 7, 8 and 9th sections of the Mt. Vernon Railroad charter were not fulfilled by the Wayne County Court; 2d. That no connection of railroads was made as contemplated by the 10th Section of the same Act; 3d. That the appointment of Wilson and Scott by the same Court to execute the deeds and the subsequent approval of their execution as shown by the Records of the Court is untrue in point of fact and so the date of recording them; 4th. That the deeds are null, because they were exe-

cuted by the Judges of the Court, and not by the Clerk. Comparing these objections with the facts proved by the solemn Record of the Wayne County Court, and by the deliberate recitals contained in defendant's deeds sued on, and to Charles Wood, they come too late—too late even if true.

The defendant is estopped from making them. The law will not allow a record to be impeached in any case in which it is received in evidence of the truth of its contents, except for fraud, which is not here charged. Neither will it permit a party to a deed to contradict or deny the truth of the recitals contained in it, as between him and his grantee or as between him and privies in the estate conveyed, which as to the complainants as *cestuis que trust*, is exactly the case at bar.

Finally the opposing counsel claim that the equities of the case, as between the complainants and Wayne county are with the latter, whatever may be the fact as to the Mt. Vernon Railroad Company.

First. Upon what ground is a distinction made, in this respect, between Wayne county and the Mt. Vernon Railroad Company? Is it true in law or in fact that the county stands in the relation of surety or guarantor of the latter's obligations? Not so. Both were original and beneficial parties to the transaction in question. The Company and the county mutually agreed with each other, the one to execute their bonds and a mortgage of their franchise for the purpose of raising money with which to build a railroad, the other to execute a mortgage and deeds of trust of her lands for the same purpose, both having entered into building contracts with the same parties, which had been assigned to the Mt. Vernon Railroad Co. The consideration moving each was the agreement of the other, and the advantage of the road when completed, which was to become the property of the Company and a convenience to the public. But if it were otherwise the relation would remain the same. But suppose the county to stand

in the relation of surety or guarantor, to whom does she bear that relation? Undoubtedly to the Mt. Vernon Railroad Co., not to the complainants, as to whom both the Company and the county are principal. Such is, and alike the doctrine of the text books and the courts.

In the last resort the defendant's counsel protest the failure of the enterprise and of the county to derive any benefit from it. Grant it; yet whose fault is it? Surely not that of the complainants who had no part in conceiving, recommending, projecting or undertaking to execute it. They are blameless, and strangers as to all these things. Not so the county, who was party and privy to all of them. The consequences, therefore, legally and equitably should fall on her co-party and co-defendant the Mt. Vernon Railroad Company, whose franchise and constructions have been already sold under a decree entered in the case. (See Record, p. 535½). Equality and equity would subject both alike, in this case, to liability and to the redemption of their respective pledges. A different rule would be invidious and unjust.

All the equities of this case are with the complainants. The county pledged her swamp lands for the redemption of the Company's bonds. The bonds so recite upon their face. (See Record, pp. 533-535, copy of bond). But for that pledge the bonds would have been unmarketable. That pledge gave them credit and currency. Upon that pledge the complainants bought and paid their money for them in the fair course of legitimate business. (See proofs, Record, pp. 475, 479, 480, 482, 499). Hodges, one of the complainants, deposes that he paid in good money about par value for an amount of them, including coupons attached and detached equal to some $70,000; (see Record, pp. 510, 516), also that Wilson, at the same time the County Judge and Agent of the county, recommended them to him as a good and eligible subject of investment; and all of the complainants depose that they are bona fide holders of these bonds. Moreover the deed of trust exe-

cuted April 20, 1859, by Wayne county, the Mt. Vernon Railroad Company and Ira Hersey proves that one half of the whole amount of bonds issued by the county, to-wit, $400,000 of them, were specially set apart for the construction of so much of the road as shall be located in Wayne county.

It also appears from the recitals in the deposit contract of April 27, 1859, between Wayne county of the first part, and the Mt. Vernon Railroad of the second part, and Ira Hersey, custodian of third part, which we here extend:

"Whereas the County Court of the county of Wayne, in the State of Illinois, by virtue of the laws of the State of Illinois, and of the proceedings thereunder had and taken, hath executed in due form, acknowledged and duly delivered its certain Deed of Trust and Indenture of Mortgage to Isaac Seymour, Esq., of the city of New York, Trustee, each bearing date the twentieth day of April, 1859, whereby the said County Court did grant and convey to the said Isaac Seymour such Trustee, one hundred thousand acres of land or thereabouts, lying and being in the said county of Wayne, and particularly described in said Deed of Trust and Mortgage. And whereas the object and purpose of the said Deed of Trust and Mortgage were to aid in the construction and maintenance of the railroad of the Mt. Vernon Railroad Company, and to secure the payment of the construction bonds issued by the said Company, the railroad of which said Company is designed to be constructed from Ashley, in the county of Washington in said State, through the county of Jefferson and Wayne in said State, and to the eastern boundary of the said county of Wayne. And whereas the said Mt. Vernon Railroad Company has issued its four hundred construction bonds of five hundred dollars each, and its six hundred construction bonds of one thousand dollars each, for the purpose aforesaid: and it is *designed* and *intended*, that, *one-half* of said Bonds *shall be appropriated and set apart* for the *sole* and *exclusive purpose*

of *aiding* in the *construction* of, and *maintenance* of *so* much of the railroad of the said the Mt. Vernon Railroad Company, *as is* or *shall be located* or *situate* in the *county of Wayne.*" This contract witnesses that the Mt. Vernon Railroad Company have "issued and delivered to the party of the third part, *in trust*, two hundred of the construction bonds or obligations of five hundred dollars each, and three hundred of the said bonds or obligations of one thousand dollars each, to be *held* by him *subject* to the *terms*, stipulations and conditions of the said Deed of Trust and of said Mortgage, for the *sole* and *exclusive purpose* of *appropriating* and *expending* the *same* or the *avails* thereof to the *construction* and *maintenance* of *so much* of the *Railroad* of the said Mt. Vernon Railroad Company *as shall be located or situate within the* said *county of Wayne* and not otherwise. And the said parties of the first part do hereby respectively assent and concur in and to the said *transfer* and *delivery* of the said construction bonds as herein provided, for the purposes aforesaid, and they *covenant* that *such application* and *appropriation* of the *same* shall be to the amount and extent thereof, in all respects an *effectual fulfillment* of the several *purposes* and *trusts for* and *upon which* the said *lands* and *premises were conveyed and mortgaged.*" Hersey, the third party, covenants that he will receive, hold and appropriate the bonds and proceeds upon these trusts, uses and purposes.

The half of these bonds was accordingly handed over to Hersey, and afterwards by mutual consent the custody and trusts were changed from Hersey to the county, and coming into the hands of the County Judge, Wilson, he placed them in the hands of Charles W. Lewis, and they were negotiated and disposed of under Wilson's direction for the county. (See Record, pp. 325, 326. 329, 330, 331, 332, 333 and 334). N. A. Smith testifies that Judge Wilson was the General Agent for the county and had a written power to act for the county. (See his deposition, Record, pp. 411, 412, 415).

Now we wish to call the attention of the court to this deposit agreement. By it, it appears that the railroad was to issue the whole of the bonds, and Wayne county was to give half of the security for their payment, namely, a mortgage of her swamp lands, and she was to have half the bonds and control and dispose of them and their proceeds in building the line within her limits. This contract carries out that arrangement, and the delivery of the bonds to Hersey under it. The county covenants for the proper use of the bonds and proceeds, and an "effectual fulfillment" of the "purposes and trusts" it assents and agrees was made by the Railroad Co., by the "transfer and delivery" of the half of the bonds to Hersey.

We also note again in this contract that the county studiously and carefully provides for and preserves the *trust*, making Hersey a Trustee of the value of these lands in these bonds for which they were mortgaged. They are "delivered" to him "in trust." Seymour is made *Trustee* of the lands encumbered for the bonds by the mortgage, and Hersey is made *Trustee* of the bonds for which the lands are encumbered and charged.

The trust was created by the Deed to Wood, returned to the county, and the county endeavors to execute the trust by these contracts to build the road, and these Deeds of Mortgage, Trust and Deposit of Bonds; but in all stipulating to protect, preserve and apply the fund and its proceeds to the objects of it. The records of the County Court on December 29, 1859, show that the County Court then ordered a change of the custody of these bonds, and appointed Judge Wilson agent to effect it, and the orders and receipts in evidence passed between Casey, Hersey, Wilson and Lewis show and prove that Wilson made the change. And here let us remark that a portion of these very bonds constitute an identical part of the bonds purchased by Hodges from Wilson and Lewis, and by others—Ward, Brown, Earl, Wakefield, Plunket, Burnett, Ralston and

Emerson, amounting in all to $73,000, as will appear by a comparison of the numbers in the Bill and amended Bill. Hersey's receipt for the bonds shows that he received 300 $1,000 bonds numbered 300 to 600. Eighty more were disposed of and are traceable in the letters of Lewis and Wilson on pages 332 to 334 of the Record, making $153,000 of the identical $1,000 bonds delivered to Hersey under the contract. The balance we presume were disposed of by them for the county, and the proceeds received by the county or its agents for it, probably by Wilson, or he and Lewis, as the bonds were in their custody and under their control for the county. If they were not thus disposed of, where are they or their proceeds? It behooves the county, in good faith, in law, equity and justice, to withdraw its oppositions to a recovery here, or return complainants their money; or show, in other words, what has become of these bonds or their proceeds. Yet they have failed to do either.

Pressing this examination still further, we would call the attention of the court to the character of these transactions by directing its attention to the recitals and provisions of this deposit contract. We are able to trace the negotiation of some of the bonds held by the Mt. Vernon Railroad Company for iron rails, &c. (See Record, p. 449, and Grant's deposition, Record, pp. 282 to 285). Wilson directed Lewis to deliver Davis and Hersey some of the bonds and to retain some to meet his own advances. (See Record, p. 331). Thus we trace negotiations by both parties, the county and Railroad Company, of a part of the bonds held respectively by them. The line was surveyed, located and most of it cut out, grubbed and cleared—ties delivered—grading done—culverts and bridges built—and doubtless the Company applied some of the bonds held by them, or their proceeds, towards paying for this work. But complainants are not required by law, equity or common justice to account for these bonds, nor are they required to follow and see to the application of the proceeds of them, when sold to others

or purchased by themselves. The county has had half these bonds, and yet has them, or has had their proceeds; and it has failed to procure the right of way or the use of the St. Louis & Louisville Railroad charter for use, as covenanted to be done in its building contract; has failed to pay us either interest or principal, and now resists an enforcement of the Mortgage and Deed of Trust. Now after all these things have been done and omitted to be done by it, shall it be allowed to repudiate its solemn deeds as being unauthorized or as informal acts? Or shall it be absolved from its contracts and obligations for a failure of success in its laudable efforts to make such a valuable public improvement? A failure unavoidably and necessarily resulting from its own failure to furnish a right of way and a charter. And shall the losses all be thrown upon capitalists who invested in good faith in the bonds secured by her mortgage? Shall she be allowed to take $400,000 of the $800,000 of bonds issued by the Company, and use, or at least fail to account for them, and shirk the payment of any portion of them? Shall she in this way leave the Company to pay them, or in default of their doing so leave *bona fide* holders of them to sustain the loss? Shall she be thus favored in contrast with the bondholders whose money she got, and the Company whose franchise and property have been already sold under a decree in this case to satisfy its bonds? Shall she go scot free and the Company be held bound? In fine shall she, first pledging her faith and land for the redemption of all the bonds indifferently, and so giving all of them their chief, if not only credit and value, and so an inducement to the public to buy them, *now* be allowed to repudiate her pledge and betray the public? The proposition is monstrous. Law, equity, morality and common decency forbid it. Such doctrine obtaining, a blow would be struck at all forms of public securities, which would startle and alarm public confidence. The loss to result might and probably would be enormous.

II. The conclusions which we have reached above, based upon the Statutes of Illinois and the evidence in the case, are abundantly sustained upon principle and authority. The POWER to mortgage or convey their swamp lands being expressly conferred on the county of Wayne, upon certain conditions subsequent, or outside facts and things *in pais* to be done and performed, it devolved on that county, by its proper tribunal, to decide and determine, whether or not the facts so forming conditions to the exercise of the absolute grant of power had in truth come into existence, or been regularly performed. Having in this case so adjudged, determined and certified to the world, on the face of negotiable money bonds by the county secured to the holders by mortgage lien on these lands, as between that county and the *bona fide* holders of such securities, the question was and is *ex vi termini* FOREVER FORECLOSED as to the actual existence or performance of such conditions precedent. It became between these parties no longer open for inquiry.

In *Gelpeke vs. City of Dubuque* (1 Wallace 203), this Court laid down the proposition broadly as follows:

"When a corporation has power under any circumstances to "issue negotiable securities, the *bona fide* holder *has a right to* "*presume they were issued under the circumstances which give* "*the requisite authority*, and they are no more liable to be im- "peached for any infirmity in the hands of such a holder than "any other commercial paper".

The Court refer to the cases establishing the rule, viz:

Commissioners of Knox Co. vs. Aspinwall, 21 How., 539.

British Bk. vs. Tarquand, 6 E. & B., 327.

Tanners L. & T. Co. vs. Curtis, 3 Selden, 466.

Stoney vs. A. L. I. Co., 11 Paige, 635.

Morris Canal & B. Co. vs. Fisher, 1 Stock. Ch., 667.

Wilmarth vs. Crawford, 10 Wend., 343.

Alleghany City vs. McClarkan, 14 Penn., 83.

In *Com'rs of Knox Co.* vs. *Aspinwall* this court say "The "Bonds on their face import a compliance with the law under "which they were issued. The purchaser was not bound to "look further for evidence of a compliance with the conditions "of the grant of power."

Judge Nelson in delivering the opinion of the Court, adds further:

"We do not say that the decision of the Board (the county) "would be conclusive in a direct proceeding to inquire into "the facts previously to the execution of the Power, and be- "fore the rights and interests of third parties had attached; "but after the authority has been executed, the stock sub- "scribed, and the Bonds issued and in the hands of innocent "holders, it would be too late, *even in a direct proceeding*, to "call it in question. Much less can it be called in question "to the prejudice of a *bona fide* holder of the bonds *in this* "*collateral way*."

The case of *Bank vs. Tarquand* is to the same effect. By the charter of a joint stock Company the Directors had power to borrow money in such sums as a general resolution of the Company should authorize. The action was on one of the Company's Bonds; the defense that no sufficient resolution was in fact passed. The Court said—"Finding that the authority might be made complete by resolution, he (the purchaser) would have a right to infer the fact of a resolution authorizing that *which on the face of the document appeared to be legitimately done.*"

The other cases cited by the Court are to the same effect, and in *Stoney vs. A. L. I. Co.*, the ruling is quite as emphatic, viz:

"A negotiable security of a corporation, which upon its face "appears to have been duly issued by such corporation, and in "conformity with the provisions of its charter, is valid in the "hands of a *bona fide* holder thereof without notice, although "such security was in fact issued for a purpose and at a place "not authorized by the charter of the Company, and in viola-"tion of the laws of the State where it was actually issued."

At the same Dec. term, 1863, this Court held in the case of *Mercer Co. vs. Hackett* (1 Wallace, 83), that

"Where a county issues its bonds payable to bearer, and solemnly pledges the faith, credit and property of the county under the authority of an Act of the Assembly referred to on the face of the Bonds by date for their payment, and those Bonds pass *bona fide* into the hands of holders for value, the county is bound to pay them. It is no defense to the claim of such a holder that the Act of the Assembly, referred to on the face of the bonds, authorized the county to issue the bonds only and subject to certain "restrictious limitations and conditions" which have not been formally complied with; nor that the bonds were sold at less than par when the Act authorizing them and referred by date on the face of the instrument declared that they should "in no case" nor "under any pretence" be so sold. Corporation bonds, payable to bearer, have in this day the qualities of negotiable instruments."

In the case at bar the bonds recite the Mortgage pledge, and the Mortgage and Deed of Trust adopt the bonds and recite the law and A FULL COMPLIANCE with the law authorizing the mortgage pledge. The holders are *bona fide* purchasers in and of the property pledged in and by delivery of the bonds *pro rata.*

This doctrine was again affirmed by this Court in *Rogers vs. Burlington*, (3 Wallace, 654), viz:

"Power to issue the bonds (in this case mortgage) being shown the municipal corporation as against *bona fide* holders of them for value is *estopped* to deny that the power was properly executed."

In *Moran vs. Com'rs of Miami Co.*, (2 Black, 722), the doctrine of *estoppel* was fully applied in a like case. This Court there held that

"A county or other municipal corporation being authorized by Statute to borrow money and issue bonds for the payment therof, if the bonds be made and delivered *reciting the facts*, which show them to have been regularly issued, the county *is estopped* to deny their regularity or to assert that they were not made in conformity with the statute."

The authorities cited in the earlier cases are again referred to and approved.

The *recitals* in the Mortgage and Trust Deed and in the Bonds, mutually referring to each other, in this case, are *conclusive* upon the county, as are also the *recitals* in the Deed to Wood, forming a link in the chain of title, and all under the same trust, (Wood having re-conveyed back to the county). These *recitals* conclude the county as a plenary admission of the facts, *as facts* constituting the conditions to the execution of a mortgage by them of the swamp lands, and form an absolute *estoppel.* This is an elementary principal of law.

"The parties to a deed are *estopped* to deny the truth of the recitals therein."

U. S. vs. Benning, 4 Cranch, C. C. R., 81).

"Recitals in a deed are binding on the parties to it, and those claiming under them."

West vs. Pine, 4 Wash. C. C. R., 691.

A recital of one deed in another binds the parties and those who claim under them. Technically speaking it operates *as an estoppel*, and binds parties and privies, privies in blood, privies in estate and privies in law. (2 P. Wms. 432; Willes 9; 1 Salk. 276, 285; 6 Mod. 44; 6 T. R. 171; 2 B. & Ald. 242; Comyn's Dig. Es. B. & E.; Coke, Litt. 352, *a*, 3 J. cases 174; 4 Binney 231-314; 17 Mass. 244, 571; 4 Peters 1; 6 Peters 598).

As applicable to the construction above in this argument contended for, of Sections 7, 8 and 9 of the Mt. Vernon Railroad charter cited *supra*, we call attention to the case of *Woods vs. Lawrence Co.* (1st Black, 386), in which this Court held the same principle, viz:

"Where the charter of a Railroad Company authorizes a county "THROUGH WHICH IT MAY PASS" to subscribe to its stock, a county lying between the two *termini* of the road may subscribe *without waiting until the road is actually located.*"

So it is contended here that the Act does not contemplate an *actual, material connection* under the words "may be connected," in the future potential mood, as we have shown *supra*, but a legal possibility, the realization and fruition of which as "an accomplished fact" the county lawfully took upon itself the chances and the responsibility.

In *Supervisors vs. Schenck*, 5 Wallace, 784), this Court again said:

"It is settled law that a negotiable security of a corporation, which upon *its face* appears to have been duly issued by such corporation, and in conformity with the provisions of its

charter, is valid in the hands of a *bona fide* holder thereof without notice, although such security was in point of fact issued for a purpose, and at a place not authorized by the charter of the corporation."

We submit that this uniform series of cases, based upon the solid foundations of justice and sound morality, can not now be broken without unsettling, and with a rude shock, the whole commercial world. The county of Wayne can not be permitted to say now to the creditors, (who have taken these bonds and paid their money for them, at the instance of the county, and on the faith of her pledge and solemn representations,) that there was in fact no proper vote, and in fact no proper connection with a road through Wayne county at the time she determined and represented there was, without overruling all these decisions. And such must be the re-actionary course of this Court if this formal decree be affirmed.

We trust with confidence that the heretofore settled rule will be adhered to, and that the decree may be reversed with directions for a sale of the lands to satisfy the bonds.

WALTER B. SCATES,
JOHN A. McCLERNAND,
STEPHEN A. GOODWIN,
For Appellants.

Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 90.

JOHN W. KENNICOTT et al., Appellants,
vs.
THE SUPERVISORS OF WAYNE COUNTY, Appellee.

APPELLANTS' CASE AND POINTS.

WILLIAM WHITING,
W. B. SCATES, } APPELLANTS' COUNSEL.

WASHINGTON, D. C.
W. H. MOORE, PRINTER, 511 ELEVENTH STREET.
1873.

Supreme Court of the United States.

No. 90.

DECEMBER TERM, 1872.

JOHN W. KENNICOTT ET AL., APPELLANTS,

vs.

THE SUPERVISORS OF WAYNE COUNTY, APPELLEE

ASSIGNMENT OF ERRORS.

And now come said appellants, and say in assignment of errors that in the record and proceedings, and in the rendition of the decree for costs of the Circuit Court of the United States for the Southern District of Illinois, manifest error hath intervened.

And for a more specific assignment of errors in this behalf, they now here set forth and show to the court, as follows, viz:

First. The Circuit Court erred in finding, deciding, and determining that the proofs failed to show that, at the date of the mortgage and deed of trust in question, there was a line of railroad constructed, or authorized to be constructed, through Wayne county with which the Mount Vernon railroad was joined, connected, or intersected.

(See finding of court, Record, p. 179.

Second. The Circuit Court erred in refusing a decree granting relief prayed for in the appellants' bill.

Third. The Circuit Court erred in rendering a decree dismissing appellants' bill, and for costs against appellants.

Supreme Court of the United States.

No. 90.

DECEMBER TERM, 1872.

JOHN W. KENNICOTT ET AL., APPELLANTS,

vs.

THE SUPERVISORS OF WAYNE COUNTY, APPELLEE

I.

OUTLINE OF THE CASE.

1. On the 20th day of April, 1859, the Mt. Vernon Railroad Company made its construction bonds in the aggregate of $800,000, payable in fifteen years, bearing interest at 7 per cent. per annum, payable half yearly—with interest warrants attached—and principal and interest payable to bearer on presentation at the Bank of North America, in the city of New York. (See copy of Bond and Warrant Record, pp. 54, 153, 154.)

2. On the same 20th day of April, 1859, and as part of the same transaction, the County of Wayne by its County Judges executed and delivered its mortgage and deed of trust to Isaac Seymour, as Trustee, upon one hundred thousand acres of its swamp and overflowed lands, to secure the payment of the principal and interest of said bonds: wherein it is recited that by virtue of an act of the State of Illinois, of the 22d day of January, 1852, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and urveying the same," and which said act authorized the appropri-

ation and disposal of said lands for such purposes as may be deemed expedient by the court or county judges; and further recited that the Legislature of said State passed an act on the 15th day of February, 1855, entitled "An act to incorporate the Mt. Vernon Railroad Company," whereby the county of Wayne was duly authorized and empowered to make such disposition of the swamp and overflowed lands within the said county of Wayne in aid of the construction and maintenance of said railroad, as they deem best for the public interest of said county; it is further therein recited that the county court of Wayne county prepared a proposition in the following words: "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county" and "against the same," which said proposition—after due notice being given—was submitted to the people of said county, for adoption or rejection, at an election held on the 5th day of November, 1855—and that the same was approved and adopted by a majority of all the voters voting at said election, which vote was duly canvassed, declared, and return thereof made according to law; whereupon the county court did adopt said proposition, and did order, adjudge, and determine to execute a mortgage in conformity to such proposition or plan, and to the provisions of this instrument, for the purpose of aiding in the construction and maintenance of the said Mount Vernon Railroad—which said order was duly made in open court on the twentieth day of April, 1859; and that by virtue of said several acts and proceedings, the county of Wayne have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said Mt. Vernon Railroad Company; and the said county judges of Wayne county deem it best for the public interest of the said county of Wayne that the lands should be mortgaged to Isaac Seymour, as Trustee, for the purposes expressed. It is provided, amongst other provisions in said deeds, that in case at any time interest to an amount equal to one whole year's interest upon said $800,000 shall become due, and shall remain unpaid and in arrear, that then the whole of said bonds, principal and interest, shall become due and payable. In witness whereof, the said parties of the first part have hereunto

set their hands and seals, and the seal of the said county court. S. J. R. Wilson. Thomas M. Scott, Judge. [Seal.]

See *Record*, pp. 52 to 64 for Mortgage.
See *Record*, pp. 66 to 75 for Deed for Trust.

3. The orders of said county court, referred to in the recitals, are upon pages 66 and 67 of the Record, and are as follows: "At a special term of the county court of Wayne county begun and held at the court-house in Fairfield, on the 20th day of April, 1859, present Hon. S. J. R. Wilson, Judge, Thomas M. Scott, Associate, J. W. Barnhill, Clerk. And now on this day the *court* executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, which is entered of record in the Recorder's office of said county in Mortgage Book B, pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour as collateral security—to *enable* the *Mt. Vernon Railroad Company to procure money to build a railroad through Wayne county from the eastern boundary of said Wayne county to Mount Vernon* in Jefferson county; and which said mortgage is referred to and is recorded in the Recorder's office of said Wayne county in Mortgage Book B, pages 341 to 359. And it is ordered by the court that Sam'l J. R. Wilson be, and he is hereby appointed a commissioner to act as the attorney of said Isaac Seymour, Trustee as aforesaid, in the said county of Wayne, State of Illinois."

4. It is admitted by the defendant that there was no irregularity in the way the power was exercised in making this mortgage, and that the foreclosure is not resisted on any such ground. (See printed argument of appellee's counsel, p. 36.)

5. The appellants filed this bill in 1865 in the Circuit Court of the United States for the Southern District of Illinois against the appellee for a foreclosure of the mortgage and deed of trust referred to, and for a sale of the mortgaged premises; and they allege that they are the *bona fide* owners respectively of large amounts of said bonds purchased by them respectively in good

faith, in the usual and open market for such securities, in the due and usual course of trade for a valuable consideration paid therefor. They further aver that interest is due and unpaid and in arrear, equal in amount to one year's interest upon the whole amount of $800,000 issued by said Mount Vernon railroad; that no interest has ever been paid upon any of said bonds, and that the conditions of said mortgage and deed of trust have been broken, and that the whole of the principal and interest of said bonds for $800,000 has become due any payable, and that they have become entitled to have a foreclosure of said deeds of mortgage and trust, and a sale of the mortgaged premises for the payment of the debts and interest due them thereon. They further aver that Isaac Seymour, the grantee and trustee therein, has departed this life, and that no successor in this trust has been nominated or appointed, and that all the trusts in said deeds provided remain wholly unexecuted by said Seymour in his life time. The bill further avers that Wayne county was authorized and empowered to make said deeds to aid in the construction of a railroad in Wayne county and in the construction of the Mount Vernon railroad, and any other railroad.

(See Record, pp. 7, 16, 17, 18, 19, 26, 27, and 28 especially.)

The prayers of the bill for relief are—

That a trustee be appointed.

That an account be taken of the amount due each complainant.

That a decree be rendered for the amount due each.

That a decree of foreclosure be rendered, and that the mortgaged premises be sold.

And that such other and further relief be given as to equity appertains.

(See Record, pp. 5, 10, 22, 30, 32.)

Answer.

6. The appellee filed an answer admitting the non-payment of interest upon the bond, and that no provision has been made for its payment. (See Record, p. 39.)

All other allegations of the bill are denied. (Record, pp. 36 to 39.)

7. A general replication was filed.

8. The Circuit Court, upon the hearing, dismissed the bill upon the ground that the proofs failed to show that at the date of the mortgage and deed of trust in question there was any line of railroad constructed, or authorized to be constructed, through Wayne county with which the Mount Vernon railroad was joined, connected, or intersected. (See Record, p. 179.)

9. The appellants now come and say that the Circuit Court erred and assign for error:

1. The decree of the court below dismissing the bill, and in rendering a decree for costs against appellants.

2. The court erred in deciding that the proofs failed to show that at the date of the mortgage and deed of trust in question, there was no line of railroad constructed, or authorized to be constructed through Wayne county, with which the Mt. Vernon railroad was joined, connected or intersected.

3. The Circuit Court erred in refusing to render a decree for the relief prayed.

BRIEF OF POINTS AND AUTHORITIES.

I.

1. The forms of the bond, mortgage, and deed of trust are correct—the substance sufficient—and their proper and due execution are not denied; and no objection is taken thereto in the answer.

II.

2. The conditions of the mortgage and deed of trust have been broken by the non-payment of interest, and this is admitted in the answer, (see Record, p. 39,) and the appellants' right to recover and to have a foreclosure and sale have become complete and absolute.

III.

3. The appellants were *bona fide* purchasers for a valuable consideration paid, and made their purchases of these bonds, which are payable to *bearer*, and pass by delivery, like money, in open market, and in the regular and due course of trade, in such securities.

(See depositions of J. W. Ward, Record, p. 134.)
John H. Brown, Record, p. 135.)
Austin Myers, Record, p. 136.)
M. J. Earle, Record, p. 137.)
(Evidence of Wm. R. Hodges, Record, pp. 144 to 147, and 152.)

4—*a*. The county of Wayne the appellee, received the bonds, (see contract, Record, p. 90; Casey's order, p. 92; Hersey's receipt, p. 92; receipts of Wilson & Lewis, p. 93,) put the bonds upon the market and sold them, and received the money for them.

(See Wilson's letter, Record, p. 93.)
Lewis' letter, p. 94.)
Wilsons' order; p. 95.)
Hodges' evidence, pp. 144 to 147.)

And the county still retains the proceeds of the $400,000 of bonds delivered to it by the Mt. Vernon Railroad Company.

5—*b*. In the division of the bonds, between the Mt. Vernon Railroad Company and Wayne county, the county got one half of the whole amount issued, viz: $400,000. (See Hersey contract, Record, p. 90.) Casey, as president of the company, ordered the treasurer to deliver them to Hersey, (Record, p, 92,) and Hersey's receipt for part is in the Record, p. 92, see also for balance of the $400,000, Grant's deposition, pp. 96, 97.

Hersey's receipt shows that the bonds of the demomination of $1,000 delivered to him, were numbered consecutively from 300 to 600 inclusive.

Of these $1,000 bonds delivered to Hersey, as trustee or custodian for Wayne county, under that contract—

(J. W. Ward	owns 21.	(See Record p.	29.)
T. Upham	2.	do	29.
J. H. Brown	7.	do	30.
C. Wakefield	9.	do	30.
M. J. Earle	7.	do	30.
W. R. Hodges	21.	do	30, 31.
W. C. Plunket	1.	do	33.
J. Burnett	1.	do	34.
W. L. Bolston	2.	do	34.
W. P. Emmerson	owns 2.	do	35.)

Amounting to $73,000, and these bonds were sold and the money for them received by Wayne county or its duly authorized agents, and these bonds now belong to the above appellants in this case, and are, with other bonds, the ground of action in this bill. (See Grant's deposition, Record, p. 97; Smith's deposition, p. 117.)

6—*c.* The proofs show that the railroad project, in aid of which the bonds were issued and mortgage given—viz: a line of road running across Wayne county and connecting with other railroads through the Mt. Vernon railroad—was not only commenced, but was partially constructed, by means derived from the sale of said bonds. To be more explicit, the entire line from Ashley, on the Illinois Central, eastward to and across Wayne, and to a point on its east boundary line—thus passing entirely across the county, from its east boundary to its west boundary, and on west by Mt. Vernon to Ashley—was not only surveyed and located, but the line was cleared or cut out, grubbed, and ties prepared and distributed along the line halfway across Wayne county, i. e., from Fairfield to its western boundary, and thence westward by Mt. Vernon to Ashley; and a large part of the grading was done, culverts were built, and timbers for bridges were gotten and prepared between Mt. Vernon and Ashley.

(See Engineers' Report, Record, p. 98 to 100)
(Depositions of Sursa, " p. 101.)
(Deposition of Grant, " p. 97.)

7—*d.* All this work of construction was done by the Mt. Vernon Railroad Company as the assignee of and in pursuance and fulfilment of the contracts made by Wayne and Jefferson coun-

ties with Vanduser Smith & Co. for the construction of parts of the whole line, which contracts had been assigned to said Mt. Vernon Railroad Company.

(See Contracts, Record, pp. 41–46.)
(See Assignment, Record, p. 51.)

8—*e.* It is thus evident that Wayne county received the benefit of a partial construction of one of the links in the line of railroad contemplated, in aid of which said bonds and deeds were made, although the contractors failed to complete the same.

The purchasers of such bonds as these are not required to see to the faithful application of the purchase money. Nor do purchasers hold such bonds, subject to be repudiated in case of a failure of success in the enterprise for which they are issued.

Even if the reverse of these propositions were true, equity would not allow the county to repudiate its bonds, or its mortgage to secure them, without returning the money received from those to whom it sold them.

9—*f.* It is apparent to the court, from the facts in this case, that the defence set up here would be equally good and available even had the road been completed and was now in successful operation.

And this shows how unjust and unconscionable such repudiation is, when set up as a defence against the fair and *bona fide* holders of such securities.

IV.

10. All the presumptions of law and equity are in favor of the rights of the appellants to recover upon their bonds and mortgage.

11—*a.* These deeds were executed in open court, by the judges of the county court, for the county, sitting officially as a court, and affixing the county seal to the deeds, and entering up an order of court upon the records of the court; and being a public, official act of the court, it becomes notice to all purchasers that the bonds are valid, and the mortgage binding on the county.

(See order of court, Record, p. 77.)
(See also Deps. of Smith, Record, p. 116.)
(Deps. of Grant, Record, p. 78.)

12—*b*. These deeds, then, are and must be taken and treated as the deeds and acts of Wayne county, and this would be the case even if the judges had acted only in the capacity of agents instead of that of a court; and being the acts and deeds of the county, in equity, the appellee cannot be received or allowed to contradict the recitals and provisions of these deeds; nor can appellee contradict the Records of its own county court; but its mouth, in equity, must be forever closed as to these deeds and Record, as it would be estopped in a court of law, unless it will show that these transactions were tainted with fraud. Appellee cannot, therefore, be heard upon, or allowed to make objections of this character. Such defences are unavailable in such circumstances in a court of equity.

13—*c*. The maxim that one who asks equity must do equity will apply. Before it can repudiate the acts of its own officers and agents upon the ground that no road was built and completed, it would be required to return to appellants all the money received by it for the sale of these bonds. But we by no means admit that such payment back would entitle the county to be relieved of its obligations.

V.

1. The main question in this case is, whether Wayne county, by its duly constituted officers, had the power to make the mortgage and trust deeds upon which this suit is founded?

There are four distinct and different sources, from either of which Wayne county derives full and ample power to make the mortgage and trust deeds sued on.

15—1st. The general statutes of Illinois authorize counties to sell and convey any real estate belonging to the county, and to appoint agents to do so for it, and also to make contracts, whose acts bind it.

(See acts set out in appellant's argument, pp. 13 to 16.)

16—*a*. The county also has full power and right, and is under obligation, to open, construct, and repair roads and bridges.

(People *ex rel.* of Hoes *vs.* Canal Trustees, 14 Ill. R., 402.)
(Dennis *vs.* Maynard *et al.*, 15 Ills. R., 477.)

17—2d. The general swamp act of February 14, 1859, gives general and unlimited power and discretion both as to selling swamp lands and over the disposition of the proceeds.

(See appellant's argument, pp. 16–17.)

18—*a.* Section four of this act not only gives or reaffirms unlimited power and discretion to sell swamp lands, but it expressly authorizes the county authorities to carry into effect any previous and existing contracts "for the disposal of their swamp lands" as they may deem best, without restriction as to the mode of conveyance, or as to the purposes to which the proceeds shall be applied.

19—*b.* To show the application of this statute to the case now before the court, it is in proof that previous to the passing of this statute, Wayne county, in pursuance of a vote of the people, and by virtue of authority derived from the tenth section of the Mt. Vernon railroad charter, conveyed its swamp lands to Charles Wood, in trust, to aid the construction of the Bellville and Fairfield Railroad Company and the Alton, Mt. Carmel and New Albany Railroad Company in that portion of these lines, lying across Wayne county, and which said conveyance, so made and declared in it to be made under the power and authority derived from the tenth section of the Mt. Vernon railroad charter and the vote of the people of Wayne county, was afterwards recognized and declared to be legal and made *valid* by the fourth section of the act of July 11, 1857, amending the charter of said Bellville and Fairfield Railroad Company.

(See act cited in appellant's argument, p. 26.)
(See, also, recitals in Wood deed, Record, pp. 120, 123, 124, 125.)

The road not being built, Wood, at the request and by order of the county, reconveyed said lands to Wayne county in trust for the use of the people in said county, to aid in the construction of a railroad across said county. (See deed of reconveyance, Record, p. 126.)

20. In pursuance of this object Wayne county made a contract with Vanduser Smith & Co. on the 19th of November, 1858, (see contract, Record, p. 46,) to build a railroad upon the same line above decribed, viz: from the eastern boundary of said county entirely across and on westward to Mount Vernon, in Jefferson county, passing entirely through and across Wayne county, from east to west, and connecting with the Mount Vernon railroad at Mount Vernon, and to convey these swamp lands, in payment therefor, at $5 per acre. This building contract, after the passage of the above act of February 14, 1859, was assigned to the Mount Vernon Railroad Company, and said company, as assignee, thereupon accepted said assignment, and undertook to build this line of railroad from the eastern boundary of Wayne county westward entirely across said county, and thence on, westward, to Mount Vernon, in Jefferson county, and was entitled to said swamp lands in payment therefor. It was afterwards found that the means for constructing this line of road, which was to be paid for in these swamp lands at $5 per acre, could not be obtained by the mere sale of these lands in the market, as they would not bring that price at that time. Thereupon the county and the Mount Vernon Railroad Company, upon consultation, adopted the plan by which the Mount Vernon railroad was to issue its bonds, as before stated, for $800,000, and secure them by a mortgage deed of trust upon its own franchise and all its property; and Wayne county was further to secure them by the deeds of mortgage and trust of these same swamp lands, the equitable right to which became vested in the Mount Vernon Railroad Company as assignee of this contract. In the meantime, and before the formal assignment of said building contract was made to the Mount Vernon Railroad Company, the above statute of February 14, 1859, was passed, which in effect confirmed and established the power of Wayne county to apply its swamp lands in pursuance of its previous and then existing contract to build its railroad; and thereupon, and under the full and ample powers conferred by said act, Wayne county proceeded to mortgage these lands by virtue of the powers conferred by this act and the special charter of said Mount Vernon and Bellville and Fairfield Railroad Companies. Were there no other sources of power besides this act, we submit to the court that this alone would be sufficient, and the validity of this "transaction" is recognized by said act.

21. 3d. Another and distinct source of power in Wayne county to make the deeds sued on, might be derived from the charter of the Bellville and Fairfield Railroad Company, (see sections 14 and 16, appellants' argumt., pp. 25 to 30,) and from the provisions of the act of February 11, 1857, amending said charter.

(See appellant's argumt., pp. 26, 27.

By the 14th section of this original charter an election is provided to be held before these swamp lands can be donated to railroad purposes under this act; but it prescribes no form in which the question shall be submitted to the people at such election. Wayne county held an election on the 5th of November, 1858, upon a proposition to donate these lands as a bonus to *any company* that would build a railroad through Wayne county.

(See mortgage and deed of trust, Record, pp. 52, 66.
Deed to Chas. Wood, Record, p. 117.)

22. In pursuance of this vote Wayne county conveyed these swamp lands to Charles Wood in trust. The 4th section of the amended act, subsequently passed, confirmed and made legal the vote that had been taken and the deed to Wood for that purpose; and the 5th section gives general power to every county through which this road runs to donate its swamp lands to this line of railroad.

In pursuance of this policy, and to accomplish the object of building a railroad across and through Wayne county, and thence westward to Mt. Vernon, in Jefferson county, and there connecting with the Mt. Vernon railroad, and by its line of road reaching an outlet or connection with the Illinois Central railroad at Ashley, on the 19th day of November, 1858, Wayne county entered into a contract with Vanduser Smith & Co., for building that part of the line of said Bellville and Fairfield railroad which lies between the east line of Wayne county and Mt. Vernon, in Jefferson county, thus running entirely across said county of Wayne and into part of the adjoining county of Jefferson, and therein agreed to pay for

the same by conveyance of these swamp lands to the contractors at the rate or price of $5 per acre.

(See contract, Record, p. 46.)

23. This contract was afterwards assigned to the Mt. Vernon Railroad Company, (see assignment, Record, p. 51,) and the same was accepted by said company, and said company became liable, and undertook to perform the same as such assignee, and also became equitably entitled to the conveyance thereunder, of said swamp lands upon the performance of said work in accordance with the provisions of said contract.

(See contract and assignment, Record, pp. 46, 51.)

Wayne county and the Mt. Vernon Railroad Company finding it impracticable to raise the money to build this line of road, by a simple or direct sale of these lands under said building contract, consulted together and adopted the plan of raising the necessary means of building the line, by issuing the bonds of the Mt. Vernon Railroad Company for $800,000, and securing the same by the mortgage and deeds of trust upon which this suit is founded. One half of these bonds, viz: $400,000 were delivered to and received by Wayne county to be sold, and the proceeds applied exclusively to the construction of that part of the line embraced in said building contract

(See Hersey's contract, Record, p. 90.
Casey's order, do p. 92.
Hersey's receipt, do p. 92.
Wilson's receipt, do p. 93.
Lewis' receipt, do p. 93.
Grant's deposition, do p. 96.)

Wayne county, by its agents, sold these bonds in open market, and received the proceeds.

(See letter of Wilson, Record, p. 93.
letter of Lewis, do p. 94.
order of Wilson, do p. 95.)

And a large part of these identical bonds are owned by appellants, and payment of them sought by this bill.

23. 4th. A still further separate and independent power was conferred upon Wayne county, to make the mortgage and deed of trust sued on, by the 7, 8, 9, and 10 sections of the charter of the Mount Vernon Railroad Company.

(For charter see appellants' argument, pp. 3 and 4.)

By the 10th section of this act it is provided, "That any county through which said road may run, and every county through which any other railroad may run, with which this road may be joined, connected, or intersected, may, and are hereby authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect, and for this purpose the provisions of the 7th, 8th, and 9th sections of this act shall extend to include and be applicable to *every such county* and *every such railroad*."

25. The only question as to the power arising under this statute is this, viz: Whether the Bellville and Fairfield railroad (now called the St. Louis and Louisville railroad) is one which comes within the provisions of this tenth section? In other words, Is this such a road as may be *joined, connected,* or *intersected* by the Mt. Vernon road? If it is so, this section gives the power required to enable the county of Wayne to make the deeds of mortgage and trust in question.

26—1. The Bellville and Fairfield railroad was a road which, when located in accordance with its charter, might and would be joined and connected with the Mt. Vernon road. This is seen by examination of the map in connection with the charter, by which it is shown that the two roads were to pass over and along the same route across Wayne county, through Mt. Vernon, and thence to Nashville. Ashley, the western terminus of the Mt. Vernon railroad, is on the direct line from Mt. Vernon to Nashville. Therefore, the Bellville and Fairfield railroad was to pass the whole length of the Mt. Vernon railroad, and through both of its termini, and was, therefore, a road which joined, connected, and intersected the Mt. Vernon railroad, within the meaning of the said tenth section.

(For argument on this point see appellant's brief, pp. 3–13, inclusive.)

27. This section 10 expressly authorizes aid to be given to the construction of roads out of the county. In another instance in Illinois, the Legislature of Illinois authorized the city of Quincy to donate bonds in aid of a railroad in Missouri, terminating opposite to Quincy.

(See Session Acts, 3 vol., Private Laws, 1869, p. 370.)

The same has been done in Mississippi, New York, and South Carolina.

(White *vs.* Syracuse R. W. Co., 14 Barb., 559.)
(Bell *vs.* Railroad Co., 4 Wall, 598.)
(Copes *vs.* Charleston, 10 Richardson, 491.)

All such enabling and remedial acts are entitled to a liberal construction, to promote the object sought.

(Story, Com. Const., 411, 412.)
(Christholm *vs.* Georgia. 2 Dallas, 419.)
(McCulloch *vs.* Maryland, 4 Wheat., 316.)

VI.

28. Having shown that Wayne county was authorized to make the deeds of its swamp lands, under either of the four powers above stated in the last point, V, it is obvious that if said county exercised the authority under either the third or fourth power above enumerated —that is to say, under the charters of the Bellville and Fairfield or the Mt. Vernon railroad—it was necessary to submit certein questions to the vote of the people of Wayne county; and it became the duty of the county court of Wayne county to inquire if the questions had been so submitted and the vote taken, and to ascertain and determine the same. All these proceedings were had in due form of law by the county, through the agency of its duly constituted court, and were regularly

entered and recorded on the records of the court of said county *in extenso*—and in reading the records of said court it will be seen that the foregoing transactions were so recorded, but the deeds of mortgage and trust, on which this suit is founded, with all the recitals of facts, now called in question by the appellee, are fully and distinctly set forth.

(See deed mortgage, Record, p. 52.)
(See deed trust, Record, p, 66.)
(See Orders of Court, Record, pp. 75, 93.)

The county having thus officially admitted and asserted all the acts necessary to its authority to make the deeds in question, cannot be lawfully permitted to deny or disprove its own acts.

(See appellant's argument, pp. 57, 62.
Galpeke *vs.* City of Dubuque, 1 Wall., 203.
Com'r of Knox county *vs.* Aspinwall, 21 How., 539.
British Bank *vs.* Tarquand, 6 E. & B., 327.
Tanners' L. & T. Co. *vs.* Curtis, 3 Seldon, 460.
Stoney *vs.* A. & J. Co., 11 Page, 635.
Morris Canal & B. Co. *vs.* Fisher, 1 Stick. ch., 667.
Wilmarth *vs.* Crawford, 10 Wend., 343.
Allegheny City *vs.* McClarkan, 14 Penn., 83.
Mercer Co. *vs.* Hackett, 1 Wall., 83.
Rogers *vs.* Burlington, 3 Wall., 654.
Moran *vs.* Comm'rs of M. Co., 2 Black, 722.
U. S. *vs.* Benning, 4 Cranch, C. C. R., 81.
West *vs.* Peori, 4 Wash., C. C. R., 691; 2 Pore Williams, 432; Wills. Rep., 9; 1 Salk., 276, 285; 6 Mod., 44; 6 T. R. 176; 2 B. & Ald, 242; Com. Dig., 35; Co. Litt., 352–*a*; 3 James Co., 174; 4 Binney, 251, 314; 17 Mas., 244, 571; 4 Pet., 1; 6 Pet., 598.
Woods *vs.* Lawrence, 1 Blk., 386.
Supervisors *vs.* Wall, 784.
James *et al*, *vs.* City of Milwaukee, Supreme Court, Doc. T, 1872.)

In addition to the foregoing, the county of Wayne is also bound by the recitals of facts contained in its deed of its swamp lands to Charles Wood, and by its contract with Vanduser Smith & Co., for the construction of this line of railroad, as this deed and this contract were part of the *res gestæ*, and were made in pursuance of the same policy and object, as were the deeds to Seymour, all relating to the construction of a railroad through said county, and these recitals also admit and declare all the facts, showing the authority of the county to convey its swamp lands for this purpose.

(See deed to Wood, Record, p. 117.
Wayne county contract, Record p. 46.)

And the legal validity of this deed to Wood, and the correctness of the proceedings upon which it was founded, were confirmed by the 4th section of the act of the Legislature of Illinois of February 11, 1857.

See section appellants' argument, p. 26–27.

That the facts set forth in these recitals cannot now be disputed by the county. (See appellants' argument, pp. 60 to 62.)

See also—

Moran *vs.* Com'rs of Miami Co., 2 Black, 722.
Rogers *vs.* Burlington, 3 Wall., 654.
U. S. *vs.* Bennington, 4 Cranch, C. C. R., 81.
West *vs.* Pine, 4 Wash., C. C. R., 691.
Wood *vs.* Laurence Co., 1 Black., 386.
Supervisors *vs.* Schenck, 5 Wall., 784.

VII.

The aid given in the Seymour mortgage by Wayne county was not to aid in building the Mount Vernon railroad, but was given to the Mount Vernon Railroad Company, *as assignee* of the railroad building contract of Wayne county with Vanduser Smith & Co. to enable it to raise money to construct the railroad provided for by that contract to be built through Wayne

county, (see order of County court at the execution of deeds, Record, p. 76–77.) The Hersey contract, (Record, p. 90,) set apart and appropriated $400,000 of the funds to be raised for the construction of that part of the line provided for in the Wayne county contract abovenamed. Therefore the objection made by appellee, that Wayne county could not give aid to the construction of the Mount Vernon railroad, because its line could not run into or touch any part of Wayne county, has no force, pertinence, or validity; for the aid given as we have shown, was given to aid the Mount Vernon Railroad Company as the *contractor*, by assignment of the said building contract, to enable it, as such contractor, to construct a railroad through Wayne county, and *was not given* to aid in the construction of its own line of road.

(See order Wayne County Court, Record, p. 77.
Assignment of contract, Record, p. 51.)

VIII.

The policy of the Legislature of Illinois has always been large and liberal, to aid in building railroads, and to enable localities, not situated upon thoroughfare lines, to give local aid in building and connecting local lines with the great commercial railroad arteries. These acts show that such is the policy in this case; and the object aimed at is, to enable these counties, with these swamp lands, to give such aid and donations as may tend to effect the construction of such local roads or parts of a longer line. Therefore all acts relating to this subject should be construed liberally, with a view to enable counties to carry out that policy.

In James *et al. vs.* The City of Milwaukie, (Ms. Opin., Dec. Term, 1872,) this court says: "The intention of the Legislature is to be sought for. That, whatever it may be, constitutes the law. If it had been intended to limit the scope of the act to pre-existing corporations, we cannot doubt that the term *heretofore*, or some equivalent phrase, would have been employed in the proper place." "The language is, 'any other railroad company duly incorporated and organized.'" "No tense is expressed, and no particular time is indicated. There is nothing which limits and points its meaning any more to companies then, than to those thereafter organized." "This view derives support from the plain reason and object not only of this act, but of the entire series of acts upon the subject. They are all *in pari materia*, constitute a common context, and are to be regarded as if embraced in the same statute.—(Smith Com., 758.)" So in the case before the Court, beside the general statutes, these two charters give the power of sale and mortgage; and the 8th section of the Mount Vernon charter (appellants' argument, p. 3) adds thereto the power to "make such other disposition" as the county court may "deem best for the public interest of said county." To these were added enlarged powers, and a confirmation of the deed to Wood made upon a popular vote taken, (see appellants' argument, pp. 26, 27;) and to these is added the general act of 1859, (see argument, pp. 16 and 17,) not only giving unlimited power and discretion as to the disposition of these lands and proceeds, but preserving their powers in existing special acts and in existing contracts. Taking these all together, as "in the same statute," and the policy, object, and intent of the Legislature are plain, that no technical construction or informality should stand in the way of giving these lands in aid of constructing railroads in these counties.

This court further says, in James *et al. vs.* The City of Milwaukie: "The *construction practically given* by the parties interested, as evinced by their conduct, is in harmony with the views we have expressed and *is not without weight.* (Myer *vs.* Muscatine, 8 Wall, 58.) The Common Council deliberately passed the ordinances, the electors approved them, the Mayor subscribed and issued the bonds, and the companies received them as valid. We do not learn that there was any doubt or dissent as to the ques-

tion of legal authority until after both companies had become hopelessly bankrupt."

These acts and practical construction run a complete parallel with the case at bar. No question was raised, or doubt of the power and right of Wayne county to make these deeds was ever entertained or expressed by the county officers or others, during all these transactions, or for years afterwards; nor did these officers or any other person ever question or doubt that these deeds were the deeds of the county.

IX.

We will next notice and answer the objections taken by the appellee to a foreclosure and recovery.

Appellee admits in its answer the condition of the deeds sued on as broken by its failure to pay or provide for the payment of interest. (See appellee's argument, p. 36.)

And in its argument its waives all ground of objections to a foreclosure on account of irregularity in the manner in which the power was exercised in making the mortgage. (See appellee's argument, p. 36.)

The appellee further admits in its brief, (see appellee's argument, p. 22,) that "these acts *unquestionably authorize* and *empower* a county to sell and convey real estate which it may own, and of course, use the proceeds in any legitimate manner."

But appellee resists the forclosure: *first*, upon the simple ground "that, under all the circumstances set forth in this record, no power whatever existed in Wayne county, or in any of its officers, to execute this mortgage." (Appellee's argument, p. 36.)

And, *second*, the appellee adds to this another objection, viz: That the bonds in question were not issued

to aid in the construction of any railroad included within the terms of the statutes which authorized the appropriation of the lands mortgaged.

Appellants, in reply to these grounds of objection, answer that there are four sources of power to do this act:

1st. The general statutes relating to the sale of the lands of counties.

(See appellants' 5th point, paragraph 1.
Argument, pp. 13 to 16.)

2d. By the act of February 14, 1859.

(Appellants' 5th point, paragraph 2.
Appellants' argument, pp. 16–17.)

3d. By the charter and amended charter of the Bellville and Fairfield railroad.

(See appellants' 5th point, paragraph 3.
Appellants' arguments, pp. 25 to 30.)

4th. By the Mount Vernon railroad charter, sections 7, 8, 9, 10.

(See appellants' 5th point, paragraph 4.
Appellants' argument, pp. 3 to 13.)

We further answer that—

The appellee admits in his argument, (page 22,) that "these acts unquestionably authorize and empower a county to sell and convey real estate which it may own, and, *of course, use the proceeds in ang legitimate manner.*"

This is a concession of all we are asking. We claim that the county has the power to sell and convey, and it is conceeded. We claim that the general swamp act of February 14, 1859, (see appellants' argument, pp. 16–17,) sec. 3, places the proceeds "subject to the order of the county judge for such purposes as the County Court may direct." We claim that the County Court "*directed*" these lands to be mortgaged to raise money to build a railroad through the county, and that this is a use of them in a "legiti-

mate manner;" appellee concedes that such use is thus virtually authorized and legal. (See appellee's argument, p. 22.)

We claim that the 4th section of the amended charter of the Bellville and Fairfield railroad expressly sanctioned, confirmed, and made legal and valid the *donation* of these lands made to that company and the Alton, Mt. Carmel, and New Albany Railroad Company for the purpose of constructing a railroad through Wayne county. Appellee admits that if this manner of using them is legitimate, that it is then within the authority and power conferred by this act.

We claim that the 7, 8, 9, and 10 sections of the Mt. Vernon railroad charter conferred the power to donate these lands to the building of a railroad through Wayne county upon a vote of the people. We claim that the vote was taken sanctioning it; we claim that in pursuance of such vote, Wayne county approved and adopted the plan of disposing of them by donation for that object; we claim that in pursuance of these preliminary acts, Wayne county did donate them to this object, and conveyed them to Charles Wood, in trust, to aid the Bellville and Fairfield, and the Alton, Mt. Carmel and New Albany Railroad Companies, and to enable them therewith to construct a railroad through Wayne county; and we claim that the legislature expressly confirmed this donation for this purpose and declared it *legal* and *valid*.

(Sect. 4, act Feb'ry 11, 1857, appell. arg'mt., pp. 26, 27. See also Wood deed, Record, p. 117.)

We claim that the county of Wayne caused Wood to re-convey those lands, (see conveyance, Record, p. 126,) and in order to make the donation effectuate the object, afterwards, on the 19th November, 1858, and after the legislature had made this donation for this purpose "legal and valid," did by contract of that date, (see contract, Record, p. 46,) agree to appropriate, apply, devote, and sell these lands to Vanduser Smith & Co., for and as a consideration and in aid of the construction of a railroad across said county and on westward to Mt. Vernon; we claim that this contract was as-

signed to, and accepted by the Mt. Vernon Railroad Company, (see assignment, Record, p. 51;) we claim that by the general swamp act of February 14, 1859, (see act in appellants' argument, pp. 26, 27,) Wayne county was empowered to sell these lands and to dispose of the proceeds as might be deemed best in the discretion of the county court; and we claim that the county court did deem it best to mortgage these lands, and did execute the mortgage sued on, in order to raise money thereby, to enable the Mt. Vernon Railroad Company, as such assignee, to construct the said line of railroad across said county as provided in, and by said contract with Vanduser Smith & Co.; and so we finally claim all these acts, conveyances, contracts, and mortgage, done, had, and made for the object, and with view and intention to aid and procure the construction of said railroad in and across the county, was, and is authorized by the several statutes referred to, and the use of the lands to constitute a mortgage security, and the appropriation of the proceeds or money they realized to the building of this line of road, as provided and made in and by said contract and mortgage, and the Hersey contract, was the use of the same for a necessary and laudable purpose and object, and in a "legitimate manner;" and is all therefore within appellee's concession and admission.

The power of sale being thus conceded by appellant, we submit that the familiar principal of law is applicable, viz: when power is conferred to accomplish a certain object, end, or purpose, any and all necessary, proper, and appropriate means to accomplish it, are included in the grant of power.

A power, therefore, to sell these lands to raise money to aid in building a railroad, and the power to donate these lands to aid in the construction of a railroad, both include the power of a conveyance of them in trust, and of mortgaging them, when one or both of these become a proper and appropriate means, and especially when this may be the only mode of making the value of these lands available to accomplish that purpose, viz: the raising of money for the construction of the road. Lands will not build railroads; money alone can be relied on for that purpose. This is

the universal observation and experience of men. Lands granted by the States and United States have invariably been mortgaged first to raise money, and afterwards sold to pay the loan, after being enhanced in value by the construction of the road. So it was done in this case. The power to sell includes the power to mortgage; and even a lease, included in the power to sell, would be sustained, if it should appear as an appropriate means of accomplishing the object for which the sale was intended.

These acts of the Legislature are of that class and character denominated enabling, and by all the canons of interpretation should be liberally construed to effectuate the object sought. When a power is provisional in its nature, it ought to be liberally construed so as to secure the beneficial execution of the power, and no construction should be allowed which defeats or impairs its avowed objects.

(1 Story Com. on Const., 411, 412.
Chisholm *vs.* Georgia, 2 Dallas, 419, 2 cond., 635, 652.
McCulloch *vs.* Maryland, 4 Wheat., 316.)

Hence, if Wayne county was authorized by law, as appellee admits it was, to sell or donate its swamp lands to aid in the construction of a railroad, it certainly was authorized to convey these lands for the same purpose to a trustee by deeds of mortgage and trust. The greater power includes the less.

(1 Story's Com. on Const., 412, 413.
Bas *vs.* Tingey, 4 Dall, 37, 1 cond., 221.
McCulloch *vs.* Maryland, 4 Wheat., 316.
United States *vs.* Fisher, 2 Cranch, 358.
The Federalist, No. 33, No. 44.
Middleton *vs.* Alleghany County, 3 Penn., 241.
Seybert *vs.* Pittsburg, 1 Wall, 272.
Rogers *vs.* Burlington, 3 Wall, 654.)

Again, appellee's *third* objection is that the appellants, having alleged in their bill a consolidation of the Mt. Vernon and Bellville and Fairfield Railroad Companies, must be held to make proof of that allegation to entitle them to a recovery; that having failed to make proof of a legal consolidation according to the statutes of Illinois, they cannot recover in this case.

1st. We answer this objection by showing that whether it is valid or not is immaterial, because there are other allegations of the bill, either of which is sufficient, if proved, to entitle the appellants to recover.

2d. Thus among these allegations are the following, viz: that the county of Wayne, being one of the counties through which said Mt. Vernon railroad was to run, was, by the 10th section of the Mt. Vernon railroad charter, authorized and empowered to aid in the construction of the same under the provisions of the 7, 8, and 9 sections.

(See bill, Record, pp. 2, 3.)

3d. Another of these allegations is that the county of Wayne, being a county through which *a railroad* ran, or was projected to run, *connecting, joining*, and *intersecting* with the said Mt. Vernon railroad, and said Mt. Vernon Railroad Company having proposed to build and construct said road, thus intersecting with the Mt. Vernon railroad, through the county of Wayne and to Mt. Vernon, the county court of Wayne county proceeded to, and did hold an election, and take a vote of the people under the authority of the 8th section of the charter of the Mt. Vernon railroad, whereat the people voted in favor of donating the swamp lands to any company that would build a railroad through Wayne county.

(See allegations of bill, Record, p. 7.)

56. 4th. The bill further alleges that the two boards of directors of the Mount Vernon and the Bellville and Fairfield Railroad

Companies met in joint session, and by mutual agreement the two roads were joined, connected, or intersected; and also said two roads, by such agreement, were then and there so consolidated as to make but one road running through said counties of Wayne and Jefferson; that by said joinder, connection, *or* consolidation of said two companies under said agreement the said companies were organized under the name of the Mount Vernon Railroad Company, and the said board of directors and said companies did then and there elect a joint board of directors for said connected, joined, intersected, or consolidated companies in the place and stead of the several boards of directors of said companies, * * * and that by the said joinder, connection, or intersection, or consolidation of said two companies in the manner above set forth, under the said name of the Mount Vernon Railroad Company, the County Court of Wayne county, by virtue of the 7, 8, 9, and 10 sections of the Mount Vernon railroad charter, was authorized to make such disposition of its swamp lands as it might deem best.

(See allegation, Record, pp. 16–17.)

5th. Again, on page 26 of the Record, there is another set of allegations substantially the same as those last above.

Here are five different sets of allegations, and proof of either is sufficient to sustain the bill.

The purport of these allegations was that Wayne county had power to mortgage its swamp lands as it did in the deed to Seymour, inasmuch as the railroad, which was to be constructed by the aid of these lands, was one which came within the true meaning and intent of the act of February 15, 1855, sections 7, 8, 9, and 10. In other words, the road contemplated was one which might be connected, intersected, or joined to said Mount Vernon railroad, and whether it was technically consolidated with it or not was wholly immaterial.

(Appell. argument, pp. 3 and 4.)

The *proofs* fully sustain these allegations, and show that the road contemplated in the deeds of mortgage and trust to Seymour would in fact, when built, have run across Wayne county, and would have also connected with the Mount Vernon railroad at Mount Vernon, and was, therefore, precisely such a road as this act contemplated. (See map.)

So, also, the contract for building this road, made by Wayne county with Vanduser Smith & Co., shows by its terms that the road to be built would connect with the Mount Vernon railroad.

(See Wayne co. building contract, Record, p. 47.)

(See also deposition of Scates, Record, pp. 111–112.
do Pace, do 105.
do Green, do 114.
do Smith, do 115.
Recitals in deeds to Woods, do 117.
do deed, mort. and trust, Record, pp. 52–66.

Still further proof of these allegations is derived from the construction Wayne county put upon its powers under that charter, (see deed to Wood, Record, p. 127,) the mortgage to Seymour, (Record, p. 52,) and the deed of trust to Seymour, (Record, p. 66;) which disclose a series of public and official acts which would have been wholly unauthorized, unless the power we claim is to be found in the statutes. This construction was ratified by the Legislature of Illinois by confirming the legal validity of the deed of Wayne county to Wood, affirming that Wayne county, under the charter of the Mt. Vernon railroad, had power and authority to dispose of these swamp lands.

(See act of February 11, 1857, appellants' argument, pp. 26–27.)

The county of Wayne, in the deeds to Seymour, now in controversy, in express terms, claims to have derived its power to dispose of these lands from the same provisions of the Mt. Vernon railroad charter, which had thus received a legislative construction and confirmation of the powers in question.

We offer as further proof of the sufficiency of the appellants' allegations the admission and concession of the appellee in the

argument submitted, to the effect that the statutes herein cited conferred authority upon the counties to sell these lands and dispose of the proceeds.—(See admission in appellee's argument, p. 22.)

And, finally, we answer this objection by referring to the allegation and by showing in the proofs to the court that Wayne county had the power to make the deeds sued on under either of three classes of statutes above shown and referred to, even if we had failed to show any such power under the Mt. Vernon railroad charter. Thus we have demonstrated, in answer to the third objection, that if sustained it cannot prevent the appellant from maintaining this bill, inasmuch as it is supported by allegations and proofs other than those thus objected to.

The *fourth* objection of the appellee is, that the mortgage and deed of trust are not the acts and deeds of Wayne county, but only the acts and deeds of Samuel J. R. Wilson and Thomas M. Scott individually.

To this we answer, that this objection is not now open to the appellee, because the answer of appellee was not sworn to. The statute of Illinois requires that a plea or answer, to put in issue the execution of the instrument sued on, must be sworn to by the party. See Statutes of Illinois, following: Sec. 14.—"But no person shall be permitted to deny, on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence, or set off, unless the person so denying the same, if defendant, verify his plea by affidavit; and if plaintiff, shall file his or her affidavit denying the execution of such instrument." Sec. 59: "In actions upon bonds, notes, and all other writings made assignable by law, in the name of the assignee, the plaintiff shall not be held bound to prove the assignments or the signature of any assignee, unless the fact of assignment be put in issue by plea, verified by the affidavit of the defendant or some credible person, stating that he very believes the

facts stated in the plea are true." And the practice of the Courts of the United States in Illinois is conformable to the State statute.

(See 1 vol. Scates' Revised Stat. Ills., pp. 253, 254, sects. 14, 15.
Revised Stat. of Ills., 1845, p. 415, sec. 14, p. 421, sec, 59.)

But supposing that this objection were still open to the appellee, we should reply, *first*, that the Legislature of Illinois has construed a similar deed to be the deed not of the officers who executed it, but of the county.

(See deed of Wayne county to Wood, Record, p. 118.
Stat. of Ill., 11 Feb., 1857, sec. 4.
See appellant's argument, pp. 26, 27.)

This deed runs thus:

This indenture, &c., "by and between Daniel Turney, judge of the county court of Wayne county, Illinois; William Ellis, and Samuel Hooper, associate judges of said county court, of the first part, and Charles Wood, of said Wayne county, of the second part, witnesseth," &c.

The concluding clause (Record, p. 125–6) runs thus:

"In testimony whereof, the said County Court of Wayne county aforesaid, parties of the first part hereto, have hereunto set their hands and private seals, the day and year aforesaid.

(Subscribed) D. TURNEY, County Judge, [SEAL.]
WILLIAM ELLIS, Associate, [SEAL.]
SAMUEL HOOPER, Associate, [SEAL.]

Attest: [SEAL.] JOHN TROUSDALE,
Clerk County Court, Wayne county, Illinois.

The deed of mortgage to Seymour runs thus:

"This indenture," &c., "between Samuel J. R. Wilson, judge and Thomas M. Scott, associate judge of the County Court of the county of Wayne, in the State of Illinois, parties of the first part, and Isaac Seymour, of the city and State of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth."

The concluding clause runs thus:

"In witness whereof, the said parties of the first part have herewith set their hands and seals, and the seal of the said County Court, the day and year first above written."

[SEAL.]	S. J. R. WILSON, *Co. Judge.*	[S. L.]
	THOMAS M. SCOTT,	[S. L.]

As this deed is in substantially the same form as the deed to Wood it must be held to be the deed of the county in accordance with the above cited statute.

In addition to this it was officially declared at the time of its execution to be the deed of the county by the official act of the County Court, as shown by the following order of the County Court of Wayne county.

(See Record, 77.)

"At a special term of the county court of Wayne county, began and held at the court-house at Fairfield on the 20th day of April, 1859, (this being the date at which the deed was made and bears date,) present. Hon. S. J. R. Wilson, Judge; Thomas M. Scott, Associate; T. W. Barnhill, Clerk. And now, on this day *the court* executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, entered of record in the Recorder's office of said county, in mortgage book B, pp. 330–341; and also executed a mortgage on the same lands to the said Isaac Seymour, as collateral security, to enable the Mt. Vernon Railroad Company to procure money to build a railroad through Wayne, from the eastern boundary of said Wayne county, to Mt. Vernon, in Jefferson county; and which mortgage is referred to and is recorded in Recorder's office of said Wayne county on mortgage book B, pp. 341–359; and it is ordered by the court that Samuel J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymour, trustee as aforesaid, in the said county of Wayne, State of Illinois."

Subsequently, on the 27th of April, 1859, seven days after the date of said mortgage, the county of Wayne made a separate contract with the Mt. Vernon Railroad Company and Ira Her-

sey, trustee, wherein it is recited that the deeds of mortgage and trust to Isaac Seymour as trustee, as above, were the deeds of Wayne county, (Record, p. 91,) and under this contract, Wayne county actually received $400,000 of the bonds of the Mt. Vernon Railroad Company, secured by said mortgage deed to Seymour, in fulfilment of the trusts of that deed.

(Record, p. 91.
Record, p. 92.)

The County Court of Wayne again *recognized* the Seymour mortgage, and the contract to deposit its half of the bonds with Hersey, *as the mortgage and contract* of the *county*, by an *order* of the *County Court* entered on the 14th day of December, 1859, for a change of the custody of the $400,000 of bonds belonging to Wayne county.

(See order, Record, p. 93.)

This *order* of the *court* shows that the County Court understood that the deeds of mortgage and trust made to Seymour were the acts and deeds of the county, and that the Mount Vernon railroad bonds deposited with Hersey were the property of the county. This construction and understanding of the statutes, and of the deeds and contracts made under them, ought to have weight in ascertaining their meaning.

(See MS. opin., Sup. Court, Dec. term, 1872, in case of James *et al. vs.* The City of Milwaukie.)

Shall Wayne county be heard by this Court in its attempt to repudiate the act of its county court (its lawfully authorized agents) when we have proved that these mortgages were executed by these agents under authority of the law; $400,000 dollars of these mortgage bonds have been received by the county and appropriated to its own use, a part of which the county sold to the appellants, or their assignors—the proceeds whereof are still in the county treasury? To trace the custody and subsequent disposition of these bonds to the complainants. see contract to deposit the bonds with Hersey, Record, p. 90.

Casey's order to deliver bonds, Record, p. 92.
Hersey's receipt for bonds, Record, p. 92.

Request of Mt. Vernon Railroad to change custody of bonds. Record, p. 89.

Order of Wayne county court to change custody of bonds, Record, p. 93.

Receipt of S. T. R. Wilson, county judge, for bonds, Record, p. 93.

Receipt of C. W. Lewis for bonds of Wilson, Record, p. 93.

As to the disposal of these bonds by the county, see letter of S. J. R. Wilson to C. W. Lewis, Record, p. 93.

Letter of Lewis, Record, p. 94.

Endorsement of Wilson authorizing the location of certain lands with these bonds. Record, p. 95.

As to identification of bonds now in suit, see supra page 7 of these points.

The *fifth* objection of the appellee is, that Wayne county had no power to make this mortgage and deed of trust, and it takes the following grounds, viz. :

1st. The termini and entire line of the Mount Vernon railroad are so located, both by its charter and actual survey, that neither could by any physical possibility touch Wayne county, and the aid given in the mortgage and deed of trust sued on was given to the Mount Vernon Railroad Company for the construction of its own road, which was not authorized by any of the statutes of Illinois referred to.

(See objections in appellee's argument, pp. 2, 4, 21.)

2d. That the power to donate does not include the power to mortgage.

(See appellee's argument, pp. 20–21.)

3d. And that Wayne county had no power to make a donation of said lands.

(See appellee's argument, pp. 22–23.)

To these objections we answer that it is true that no part of the line, and neither of the termini of the Mount Vernon railroad, ran into or touched Wayne, (see explanatory map herewith furnished;) but we insist that the eighth and tenth sec-

tions of the Mount Vernon railroad charter gave authority to Wayne county to "aid in the construction" *of the Mount Vernon Railroad* and of *any other* road running through Wayne county with which it, 'may be connected, intersected, or joined."

As to the power of the county to *donate* these swamp lands—and whether the power to donate includes the power to mortgage—we submit that the power was expressly conferred to appropriate said lands to aid in this railroad enterprise, "by sale or *mortgage*, *one* or *both*, of the swamp or overflowed lands of said county;" or Wayne county "may make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they deem best for the public interest of said county."

(See sects. 8 and 10 in appellants' argument, pp. 3 and 4.)

The chief object expressed in these sections is to authorize "aid" to be given in these lands towards "the construction and maintenance of said railroad," and that might be done in the mode or manner, or, in other words, by the ways and means before prescribed, *i. e.* "by *sale* or *mortgage*, *one* or *both*," or "they (the counties) *may make such other disposition*" of said lands by way of "aid" "as they deem best."

The object, then, in the power given is to "aid in the construction and maintenance" of a railroad; the means prescribed are "by sale or mortgage, one or both," or "such *other* disposition as they deem best."

The conuty Court of Wayne acted under the powers given by these sections, together with the 9th section of that charter, and submitted as the *mode* and *plan* of giving such aid a proposition to *donate* these lands to any company to build a railroad through that county, and conveyed these lands to Charles Wood to aid the Bellville and Fairfield and Alton and Mount Carmel and New Albany Railroad Companies to build it through Wayne. The Legislature confirmed this deed, and this plan and this mode of disposing of these lands by the 4th section of the act of February 11, 1857, and by the 5th section expressly added that any county through which the line of the St. Louis and Louisville railroad runs "may donate" its swamp lands or the "proceeds" of them to said company "*on such terms as the County Court of such counties may prescribe.*"

The County Court made such a donation, and prescribed such terms by its contract with Vanduser Smith & Co. of November 19, 1858, by which it appropriated these lands to the construction of so much of the line as lies between the eastern border of Wayne, westward across it and on to Mount Vernon.

(See for plan and conveyance, Record, pp. 117 to 126.
See act of February 11, 1857, appellants' argu't, pp. 26–27.
See contract with Vanduser Smith & Co., Rec., pp. 41 to 46.)

And it must not be forgotten nor overlooked by this court that the conveyance of these lands to Seymour as trustee, in the mortgage and deed of trust sued on, were so conveyed, to secure the bonds of the Mt. Vernon Railroad Company, for the purpose of raising money to build a railroad with; and that this railroad thus to be built, was to be located in and run across Wayne county; and also to connect with the Mt. Vernon railroad at Mt. Vernon; and on a line identical with the charter-line of the St. Louis and Louisville railroad; and that the Mt. Vernon railroad Company, as a corporation, acted in the double capacity, first, to construct its own charter-line, and secondly, as contractors under the assignment of the Vanduser Smith & Co.'s building contract with Wayne connty, to build under that contract in and across Wayne county.

And it is further to be noticed, that the power to appropriate these lands, or the "proceeds" thereof, includes the right to obtain these "proceeds" by *mortgage* as well as by *sale*, and both these powers are clearly within the power to "*donate*," which was given in express terms by the last act above mentioned,

But still more ample authority is conferred by the said 8th section of the Mt. Vernon railroad charter, and the 5th section of the act of February 11, 1857, taken in connection with each other, which provides that Wayne county, amongst others, "may make such *other disposition* of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they *deem best* for the *public interest of said* county." And the said 5th section of the last act provides that in making such "donations," the same may be done "*on such terms* as the county court of such counties *may prescribe*."

(See section, appellants's argument, pp. 3, 27.)

Thus we see that all the contracts, conveyances, deeds of mortgage and trust, forming a series of acts in *paria materia*, calculated and tending as appropriate means to accomplish the object designed by the acts of the Legislature, viz: The giving of aid in the construction of railroads, are expressly included within the terms of these acts.

If it be insisted upon by the appellee that Wayne county had no right to contract for the building of a railroad through it, we reply that the foregoing act, which gave to the county the power of appropriating the swamp lands, or the proceeds thereof, to aid in the construction of a railroad, conferred upon the county by necessary implication, the authority to provide for the building of a railroad by the same contract by which such lands were appropriated. The making of a contract to build, either by the county, or on its behalf, was a necessary step in any proceeding toward the application of the swamp lands, or of the proceeds thereof, towards the due execution and performance thereof. And it would have been a misuse of its power had the county made any disposition of these lands or their proceeds, without securing, in and by a contract, the construction of the line of road, in aid of which they were given.

It has been objected by appellee that tbe power to appropriate these swamp lands by Wayne county to aid in constructing any railroad, could not be lawfully exercised, unless said county had previously submitted to the popular vote "a plan or plans proposed by them for aiding in constructing of said road," and appellee denies that the plan which was submitted was such as is required under the Mt. Vernon railroad charter.

We deny both the premises and conclusions. There were *two* sources of authority under which Wayne county could appropriate these lands or their proceeds without taking any popular vote:

First. The act of the Legislature of 11th February, 1857, (see appellants' argument, pp. 26, 27,) empowers Wayne county to donate its swamp lands, or their proceeds, to aid in the construction of a railroad upon the same line as that described in the mort-

gage and deeds of trust to Seymour, although the name of the railroad company had been changed by that act.

Second. Under the general Swamp Land Act of the Legislature, February 14, 1859, (see appellants' argument, pp, 16, 17,) general power is given to all counties, not only to "sell and *dispose of*" these lands for cash, or credit, or "for *such securities* as the county court may thing proper to *accept*;" but it also places the proceeds "subject to the order of the county judge, for such *purposes* as the county court may direct."

Third. That the county court, if it be deemed to have derived its powers solely under the provisions of the Mt. Vernon railroad charter, has fully complied therewith in preparing in print, and submitting to the voters of Wayne county a proposition which contained "a brief, clear, distinct idea of the plan proposed by them, for aiding in constructing the said road."

For proof of this proposition we refer to the recitals of these facts in the deeds of the county to Seymour. As we have before said, these recitals cannot be disputed or denied by the county in a suit in equity brought upon said deeds.

The plan which is proved to have been submitted, was that of *donating* these lands, in aid of constructing a railroad, in pursuance of a long settled policy of the county and of the State. That plan was sufficiently clear, definite, and distinct. We do not understand the word "donate," meant to give away or throw away these lands as a gratuity; but it means that the lands, or the proceeds thereof, to the extent of their entire value, might be applied or appropriated to aid in the construction of a proposed railroad for the direct and indirect benefit of Wayne County.

This included the right and the power to appropriate any interest in said lands less than the entire estate in fee simple; the mortgage and trust deeds made upon the lands, therefore, conveyed to Seymour, as trustee, an interest less than that which the county might have transferred if it had seen fit to exercise in its fullest extent the power conferred upon it by the statute.

As the statute itself does not specify the nature and character of the mode or plan for aiding in the construction of a railroad which was to be submitted to the popular vote, it is a sufficient compliance with the statute to submit any definite and intelligible mode

or plan of applying said swamp lands for that purpose. It was not necessary to submit to vote any plan for locating or constructing a railroad, for that object was answered by the statute itself. But the power to "donate," as it included all modes of disposing of these lands, by which such donation could be carried into effect, it became wholly unnecessary for the county to submit to popular vote any details of the contracts and conveyances by which such donation would be consummated and made effectual.

It is not alleged that in submitting the said plan to popular vote any fraud or deception has been committed by the officers of the County Court upon the people of the county, therefore the case cited, by appellee, of the Supervisors of Fulton co. *vs.* Mississippi and Wabash Railroad Company, 21 Ill. R., 373, has no bearing on this case.

The case of Marsh *vs.* Fulton county, 10 Wall., 676, cited by appellee, has no bearing upon the case now in hearing, though it is authority to show that bonds made by Fulton county in aid of a railroad without authority of law were invalid. In that case the county was authorized to issue its bonds to a certain designated corporation, and afterwards issued them, not to that corporation, but to other and different and distinct corporations.

In the case now in hearing Wayne county issued no bonds, but mortgaged its lands to secure bonds issued by the Mount Vernon Railroad Company, and the validity of these bonds is not questioned or denied.

X.

We present to the court a map of the railroad lines mentioned in the record to illustrate the argument herewith submitted, and also the lithograph map submitted with the record, showing the line of survey and location of the Mount Vernon railroad and of the Bellville and Fairfield railroad, now called the St. Louis and Louisville, as surveyed and located by the Mount Vernon Railroad Company as assignee of the *two building*

contracts, one of which was that of Vanduser Smith & Co. with Wayne county, for the construction of the railroad in said Wayne county.

WALTER B. SCATES,
Attorney for Appellants.

WILLIAM WHITING,
WALTER B. SCATES,
Counsel for Appellants.

In the Supreme Court of the United States.

JOHN W. KENNICOTT *et al.* Appellants,

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY ILLINOIS, Appellees.

Appeal from the Circuit Court of the U. S. for the Southern District of Illinois.

ARGUMENT FOR THE APPELLEES.

In the Supreme Court of the United States.

JOHN W. KENNICOTT, *et al.* *v.* THE BOARD OF SUPERVISORS of Wayne County, Illinois.	Appeal from the Circuit Court of the U. S., Southern Dist. Illinois.

ARGUMENT FOR THE APPELLEES.

This was a bill in chancery exhibited in the court below, by John W. Kennicott and others, the pretended holders of certain bonds issued by the Mt. Vernon Railroad Company, to foreclose a mortgage alleged to have been executed by the County of Wayne, upon 100,000 acres of swamp and overflowed lands owned by said county, to secure the payment of those bonds.

With the view of presenting to the Court a clear idea of the questions to be considered, we will proceed to state the facts and circumstances connected with the issuing of the bonds and the execution of the mortgage.

By an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Mount Vernon Railroad Company," approved February 15, 1855 (Private Laws, Ill. 1855, p. 249), a corporation was created with authority to construct and operate a railroad from the village of Mt. Vernon, the county seat of Jefferson county, Illinois, to the Illinois Central Railroad, or its Chicago branch, one or both.

It will be seen by reference to a map of the State of Illinois, that the Illinois Central Railroad runs north and south near the western border of Jefferson county. Mt. Vernon is situated some 16 miles east of said road, and is the initial point

and sole terminus of the Mt. Vernon Railroad, as far as the same is fixed in its charter. In order to reach the Illinois Central Railroad, it would therefore be necessary to proceed from Mt. Vernon in a westerly direction, or to reach the Chicago branch of the Illinois Central, in a northerly or northwesterly direction.

The county of Wayne, it will also be seen, lies due east of Jefferson county, and adjacent thereto.

It is thus made apparent that the Mt. Vernon Railroad could not, under its charter, run through Wayne county.

Under these facts and circumstances, Samuel J. R. Wilson, Judge, and Thomas M. Scott, Associate Judge, of the County Court of the county of Wayne, on the 20th day of Aprl, 859, executed to Isaac Seymour, the mortgage in this case sought to be foreclosed, which will be found in the printed record, page 52.

It may be proper to suggest here that by reference to that instrument it will be seen it nowhere purports to be the deed of the county of Wayne, but only that of the parties executing the same, and who filled the offices above designated.

But waiving for the present the consideration of questions which might arise from this suggestion, we will proceed to inquire as to the power of the county of Wayne to execute any mortgage upon its swamp and overflowed lands for the purpose of aiding in the construction of the Mt. Vernon Railroad.

It is claimed by the appellants, that so far as such power depends upon legislative action, it is conferred by the charter of the Mt. Vernon Railroad Company. The sections of that charter bearing on this question, are as follows :

" Sec. 6. The corporation may borrow such sums of money as they deem advisable, and upon such terms as they may agree, for the carrying out the objects of this act, and may provide any security therefor they think best, by bond and mortgage, or otherwise. "

" Sec. 7. The County Court of Jefferson county are hereby authorized and empowered to subscribe for such amount

of the capital stock of said company as they may think proper. They may issue bonds of the county, and provide for the payment of the principal and interest thereof, by sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money to pay, or in payment of their subscription to said stock; all and each to be upon such time, terms and in such mode as they may deem best; or they may make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they deem best for the public interest of said county."

"Sec. 8. Before any disposition is made of said swamp and overflowed lands, or any subscription to the stock of said company, the County Court may, at any regular or special term of said court, order a special election to be held for the purposes of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and returns made, canvassed and published in all respects as other county elections. The County Court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road; which said proposition shall be printed at large, as an election ticket, and the voters may express their will on said proposition by writing 'yea' and 'nay' on said ticket. Those opposed to any and all the propositions or plans may express their dissent by voting 'nay' on a separate ticket. The proposition or plan having the highest number of votes shall be adopted by the county court: *Provided*, majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road, shall be a majority of all the votes given at said election."

"Sec. 9. Any county through which said road may run, and every county through which any other railroad may run [with] which this road may be joined, connected or intersected, may and are hereby authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect; and for this purpose the provisions

of the seventh, eighth and ninth sections of this act shall extend, include and be applicable to every such county and every such railroad."

Conceding for the present the construction sought to be given to the 9th section by the appellants, the power depends upon the existence of one of two facts—first, that the Mt. Vernon Railroad may run through Wayne county, or second, that some other railroad may run through Wayne county, with which the Mt. Vernon railroad "may be joined, connected or intersected."

In this connection it may be a subject of some interest to the court to observe the difficulties under which the various counsel for the appellants have labored in selecting the ground upon which they would plant themselves in the assertion of the existence of this power. In the original bill it is alleged as a fact out of which the power would arise, that Wayne county was one of the counties through which the "Mt. Vernon railroad was to run." (p. 2 of record.) The geographical impossibility of such alleged fact was so apparent that a new ground was assumed in the 1st amended bill (p. 7 record,) in which it is averred "that the county of Wayne being a county through which *a railroad* run, or *was projected to run*, connecting, joining and intersecting with the said Mt. Vernon railroad, and the said Mt. Vernon Railroad Company having proposed to build and construct said road, thus intersecting with the Mt. Vernon railroad through the county of Wayne to Mt. Vernon."

"A railroad" was finally considered quite too indefinite as a foundation on which to rest their claims, so in a second amended bill (p. 16 record,) an altogether new theory was adopted, it being alleged that on the 30th of April, 1855, the officers and directors of the Mt. Vernon railroad company and of the Belleville & Fairfield railroad company, met at Mt. Vernon and entered into such an agreement that "the said two roads were joined, connected or intersected; and also said two roads, by such agreement, were *then and there so consolidated* as to make *but one road* running through said counties of Wayne and Jefferson; that by said joinder, connection,

or *consolidation* of said two companies under said agreement, the said companies were organized under the name of the *Mt. Vernon Railroad Company*;" and the bill further avers that the boards of directors of the two companies "did then and there elect a joint board of directors for said *connected, joined, intersected*, OR CONSOLIDATED companies, in the place and stead of the several boards of directors of said companies;" and in order to make it still more clear that these two companies had become one, the bill avers that the directors "also did then and there elect a president, secretary, and treasurer of *said consolidated companies*, who entered upon the respective duties of their said offices." Then in order to leave no doubt as to the ground upon which the appellants finally decided to rest their claim of power in Wayne county to make the mortgage in question, this second amended bill further avers, (p. 17 record) "that by said *joinder*, connection, or intersection, *or consolidation* of said two companies in the manner above set forth, under the said name of the Mt. Vernon railroad company, said last mentioned company, the County Court of Wayne county, Illinois, by virtue of the 7th, 8th, 9th and 10th sections of the act hereinbefore set forth, were authorized to make and execute the mortgage and deed of trust hereinafter set forth, and to make such disposition of the swamp and overflowed lands in the county of Wayne aforesaid, in aid of the construction and maintenance of the said last mentioned company's railroad as they might deem best for the public interest of said county of Wayne."

The appellants filed a third amended bill, in which they adhere, substantially, to the theory set forth in the preceding amended bill, in which they aver (p. 26 record) "that by said agreement both of said roads were joined *and said companies consolidated* under the name of the Mt. Vernon Railroad Company," and they further aver that "said boards of directors and said companies did then and there elect a *joint board* of directors, and president, secretary and treasurer, *for said consolidated companies*."

We have thus presented to the court the various theories from time to time presented by the appellants, through their

various counsel who from time to time have endeavored to fix upon a state of facts from which could be deduced, within the meaning of the Mt. Vernon charter, a power in the county court of Wayne county to apply the swamp and overflowed lands belonging to that county in aid of the construction of the Mount Vernon railroad.

It will be perceived they no longer contend that the Mt. Vernon railroad, which must run westerly or northerly from Mt. Vernon, shall run through Wayne county, which lies directly east from Mt. Vernon.

They abandon the idea set forth in the 2d amended bill, that "a railroad run, or was projected to run," through Wayne county, and which the Mt. Vernon railroad company, without any earthly power to do so, had contracted to build, and with which it expected, some time in the dim future, to be "joined, connected, or intersected."

But they finally deduce the power in Wayne county to make this mortgage, from the fact, as alleged in the 2d and 3d amended bills, that the Mt. Vernon railroad company and the Belleville & Fairfield railroad company, were, on the 30th day of April, 1855, *consolidated into one company*, under the name of the Mt. Vernon railroad company, thereby attempting to bring themselves within the terms of the 9th section of the Mt. Vernon railroad charter.

This is the case they have made for themselves upon the face of their pleadings, and we propose to hold them to the proof of the facts so alleged, that is, the *consolidation*, under the laws of Illinois, of the two companies mentioned.

Now what was essential, under the laws of Illinois, at the time this pretended consolidation took place, April, 1855, to render the same a valid consolidation? It has not been the policy of the State to permit the consolidation of railroad companies without restriction, or by the mere action of the board of directors and officers of the roads. The act of 28 Feb, 1854, (Session Laws of 1854, p. 9; Gross' Stat., p. 537–ch. 86 *a* title Railroads,) provides upon what contingencies a consolidation of two railroad companies may take place.

Section 1 of that act provides, "that all railroad companies which now have, or hereafter may have their *termini fixed by*

law, whenever their roads intersect by continuous lines, are authorized to consolidate their property and stock."

It may here be observed that the Mt. Vernon railroad has only one of its *termini* fixed by law, the other being left to the uncertain decision of the company, whether it should be on the main trunk of the Illinois Central, at Ashley or Centralia, or elsewhere, westwardly from Mt. Vernon, or at some point on the Chicago branch of the Central, northwardly from Mt. Vernon, or at some point on each of the branches of that road. It can hardly be said the *termini* of the Mt. Vernon railroad, amid so much uncertainty, *were fixed by law.*

By the 2d section of the same law it is provided, "that the companies shall respectively agree upon the terms and conditions of the same, * * and when so consolidated will be authorized to agree upon a name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic," etc. "*Provided*, that each consolidated company shall file for record in the office of the Secretary of State a copy of their said articles of consolidation., evidenced by the signature of the presiding officer of each of the said companies, and the corporate seal thereof."

In this case there is not one particle of testimony, nor do we suppose it will be pretended that this provision of the law was ever complied with.

Again, by the 7th section of the act it is provided "that such consolidation shall not take place until the terms of such consolidation shall have been approved by a majority of the stockholders in interest, in person or by proxy, at an annual or called meeting, of which due notice shall be given, by publication or in writing, to all stockholders interested, or the same be approved by the written consent of a majority of stockholders in interest, filed in the office of their company."

It is nowhere averred in any of the numerous amended bills, nor is there any proof whatever in the record, that any of the requirements of this section were even attempted to be complied with. Indeed it is not pretended in the bills that the stockholders were ever consulted in reference to this pretended

consolidation, on the contrary it is expressly averred that the directors alone, together with some of the officers of the two companies, took any part whatever in that arrangement.

Now when the pleader in setting forth the case of the complainants alleges in explicit terms that these two companies became one—that the two boards of directors were merged into one, who elected a president, a secretary and a treasurer "for said consolidated companies"—that the name of one of the companies was lost in the name chosen to embrace both, and finally, when it is averred that "both of said roads were joined *and said companies consolidated*," we have the right to insist a *legal consolidation* was attempted to be alleged and relied upon, and when the law under which such consolidation is pretended to have been had, prescribes conditions essential to the validity of such consolidation, we insist a strict compliance with such conditions must be shown.

It is as well established rule in chancery as at law. that a party must abide the case he sees proper to make in his pleading, and his pleading will be construed most strongly against himself. He will not be allowed to use a term which has a plain legal signification, and insist he used it in another and totally different sense, especially when that term is used in connection with an averment of facts which could only exist in accordance with such legal signification; so here, the pleader has not only averred, in terms, a consolidation, but he has also alleged all the results which would follow, and could only follow, a consolidation under the statute. We therefore hold him to the proof of all the statutory requirements.

But apart from these legal considerations, we desire to call the attention of the court briefly to the testimony on which the appellants rely as tending to prove the consolidation of the Mt. Vernon Railroad Company and the Belleville & Fairfield Railroad Company.

On page 114 of the record, will be found the deposition of Harvey T. Pace.

He swears that he recollects a meeting between five or six gentlemen, in Mt. Vernon, during the year 1855 or 1856; he thinks in the spring of the year. The object of the

meeting he thinks was to consolidate the stock of the Mt. Vernon and the Belleville & Fairfield railroad companies. Mr. Pace concludes his testimony thus: "My impression now is, [in Sept., 1869,] that there was a consolidation of the two companies, but I am not certain about the fact."

On the following page, 115 of the record, W. Duff Green testifies: "I have an impression there was a consolidation at some time." * * "I don't think I was present at the time said consolidation was made, and have no personal knowledge of it."

On page 111 of the record will be found the testimony of Judge Scates, the leading counsel for the appellants. Judge Scates, in answer to a question whether he knew if "any connection or consolidation of the Mount Carmel and Mount Vernon railroads was effected, and if so when," testified as follows: "I would state that there was a meeting of the two companies at Mt. Vernon — of the Mt. Vernon and Fairfield companies. I recollect very distinctly that Henry Gœdeking there, and Harvey T. Pace, directors in that Belleville road. They were incorporated as the first directors. They went with the Mt. Vernon railroad company. The meeting was held over Joel Pace's store. The object was to form a connection under the Mt. Vernon charter. I drafted whatever was drafted for the joint boards. They were adopted, *and if I knew how to draw what was wanted, I drew such as would form a connection, according to my idea* of the Mt. Vernon charter. I didn't read it. It was merely to form an intersectional connection, and that was the object of this meeting, and that was what was done, *if I knew how to draft what was necessary.*"

Now we are always glad to recognize the distinguished ability and accurate legal learning of Judge Scates, but we do humbly protest against his bringing in his well known character as a lawyer to supply the defect in his memory as a witness.

He says if he knew how to draw what was wanted, he drew such a paper as would form a connection, *according to his idea* of the Mt. Vernon charter.

Surely Judge Scates would not expect this court, on a point so important in this case, indeed in one view, the very hinging point, to accept his construction of the paper drawn by him on that occasion, and that construction to be gathered from the very uncertain circumstance whether the Judge knew how to draw what was wanted, to carry out his idea of the charter, even though the Court might not suppose the Judge's view of the law in that connection would be in the least biassed by the consideration that he is among the most prominent, if not the leading, counsel for the complainants in this case.

What we insist upon, and what the rules of evidence require, is, a statement by the witness of what was done, or what the contents of the paper were, rather than his professional opinion as to what the effect of the paper was he had himself drafted.

But to refer to Judge Scates' testimony further, in respect to the persons who participated in that meeting: The charter of the Belleville & Fairfield Railroad Company names seventeen gentlemen who shall constitute the first board of directors of that company. Judge Scates is unable to state the names of more than seven of that number, who were present, and in regard to three of those he does name he is not quite certain.

But even if the seven were present, that did not constitute a majority of the board, which by every rule governing the action of such bodies is required, to constitute a quorum for the transaction of business of such importance to the company.

It is true, Judge Scates states it as his impression, some fifteen years after the transaction, that there was understood to be a quorum present, "probably a representation of the full company." But here again the Judge seeks to supply the want of a distinct recollection as to the number present by adverting to the fact that he was acting rather in the way of *legal adviser*, as well as a member of the Mt. Vernon Company, and that he "wanted to do the thing properly, so as to comply with the Mt. Vernon railroad law," and then states that he is further convinced of the *general impression* being correct, by the fact that he afterwards went over into Wayne county and made a

speech to induce the people of that county to vote the lands.

Now we object to a question of fact being established from "general impressions" of what was "understood," even though such "general impressions" be corroborated by the consideration that he who holds them was the legal adviser and "wanted to do the thing properly", or the further consideration that Judge Scates would hardly have done so foolish a thing as to make a speech in Wayne county to induce the people to vote the lands, unless he had "done the thing properly."

Moreover, under all the circumstances connected with the railroad excitement, even at that early day, in those primitive regions, it would not have been so unreasonable if Judge Scates had gone into Wayne county to make a speech to induce the people to vote these swamp lands for railroad purposes, even though he had not succeeded in drawing a paper which would have the effect to "join, connect or intersect" or *consolidate* these two particular roads, because it will soon be made to appear there were divers other and rival projects, besides this unholy union between the Mt. Vernon Company and the Belleville & Fairfield Company, to wrest from Wayne county this fine domain bestowed upon her by the bounty of the state and federal governments. And it will be further seen, that in a few short years after this supposed "intersectional connection," which Judge Scates supposed he had accomplished in 1855, we find this same Mt. Vernon Company seeking new alliances with the holders of other railroad charters, in order to consumate the "joining, connection or intersection" of that road with some "other road" running through Wayne county, in order that Wayne county might thereby obtain the power to bestow these lands in aid of the construction of the Mt. Vernon Railroad, whose nearest point to the border of Wayne county was about 11 miles distant, and whose chief objective point was in a precisely opposite direction.

But to continue our consideration of the testimony in behalf of the appellants upon this question of consolidation, or "intersectional connection"—on pages 116 and 117 of the record, will be found the testimony of Norman A. Smith. Mr. Smith informs us that he resides in Massachusetts, and is a railroad

contractor by profession. He states further, that about the year 1858 he was engaged, with others, in the construction of the Mt. Vernon railroad, and also, from about the same time, 1858, to the spring of 1860, he enjoyed the advantages and emoluments of director and treasurer of the Mt. Vernon railroad company. Mr. Smith thus occupying such intimate relations with himself and the affairs of the company, being at once contractor and employer, we shall be prepared for the prompt manner in which he disposes of this question of consolidation.

The 10th interrogatory propounded to Mr. Smith was,

"Was there a *consolidation* between the Mt. Vernon Railroad Company and the Belleville & Fairfield Railroad Company, by which a connection was made of their roads?"

Mr. Smith could not be misled in regard to the character of information desired to be elicited through this interrogatory, and promptly answers, "There was." And then, not to leave us in the dark on the important question how he knew "there was," he adds: "When our firm were making our contract at the court house for the building of the Mt. Vernon railroad, *it was represented to us by the county authorities then present that the commissioners had effected said consolidation.*"

In this very summary way Mr. Smith settles the question of consolidation, and gives his reason for "knowing whereof he speaketh." And here we see that the unhappy diversity of opinion which has appeared to exist between the several counsel for the complainants, as to whether this alliance between these two companies is a "joining," "connection," an "intersection" or a "consolidation," has extended even among the witnesses, for while Judge Scates only desired to accomplish an "intersectional connection," Mr. Smith insists it was a "consolidation."

It was during Mr. Smith's administration as Director and Treasurer of the Mt. Vernon railroad company, that the remarkable ballooning contract was made, to be found on pages 128 and 129 of the record, in respect to the paper of the Whitfield Bank, located, as some supposed, at Dalton in the State of Georgia.

So much for the evidence on behalf of the appellants, that the Mt. Vernon and the Belleville & Fairfield railroad companies were *consolidated*, or even that there was an "intersectional connection" established between them, at the meeting held in Mt. Vernon, "over Joel Pace's store," on the 30th of April, 1855.

We will now consider the rebutting evidence on that subject.

On pages 158, 159 and 160, of the record, appears the testimony of S. J. R. Wilson, who was county Judge of Wayne county from the fall of 1859 to the fall of 1861. In the year 1859 Judge Wilson was a director of the Mt. Vernon railroad company, and during that year, Judge Wilson testifies, that with the advice and consent of Gov. Casey, President of the Mt. Vernon company, and the other directors, he, in behalf of the company, entered into negotiations with General Pickering, for the purchase of some interest he was supposed to have in the Belleville & Fairfield charter, or some other charter which would afford a continuous route eastward from Mt. Vernon through Wayne county. Judge Wilson testifies explicitly, that the object of this negotiation on the part of the Mt. Vernon company was to secure an extension of railroad line eastward—that it was then the understanding with Gov. Casey, and the directors, that the Mt. Vernon company had no arrangement with any other company for a connection east of Mt. Vernon.

Now this was in 1859—near four years after Judge Scates supposed he had drawn a paper accomplishing an "intersectional connection" between the Mt. Vernon and the Belleville and Fairfield companies. The testimony of Judge Scates shows that one of the Caseys was present at the meeting in April, 1855. We infer that was Gov. Zadock Casey; yet we find Gov. Casey, four years afterwards, as president of the Mt. Vernon company, actively promoting negotiations, not only with Pickering, but seeking legislative action, in order to secure for his company a connection eastward from Mt. Vernon through Wayne county. Gov. Casey was well known to at least one member of this court, as a man who rarely made a mistake in regard to his business relations He was not so good

contractor by profession. He states further, that about the year 1858 he was engaged, with others, in the construction of the Mt. Vernon railroad, and also, from about the same time, 1858, to the spring of 1860, he enjoyed the advantages and emoluments of director and treasurer of the Mt. Vernon railroad company. Mr. Smith thus occupying such intimate relations with himself and the affairs of the company, being at once contractor and employer, we shall be prepared for the prompt manner in which he disposes of this question of consolidation.

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a lawyer as Judge Scates, perhaps, but he was a very much better business man. Whatever was done by Judge Scates at the meeting in 1855, it is evident Gov. Casey did not consider the "thing done properly," for he was not a man to go over the same ground twice, needlessly.

It can hardly be considered that Gov. Casey was not fully aware of all the relations between the Mt. Vernon company and every other company, Besides being a man of rare ability, progressive, public spirited, he had large possessions of his own to be benefited by the proposed enterprise. He had every inducement and facility to know all the facts, and all his conduct is in direct conflict with the idea that Judge Scates' paper drawn at the meeting in 1855, amounted to anything at all.

Then on page 169 of the record, we have the testimony of R. P. Hanna, who states that he was employed in behalf of the Mt. Vernon company to negotiate with General Pickering, who was then supposed to control the Belleville & Fairfield charter, and his negotiations were also to embrace the Alton, Mount Carmel and New Albany charter. Mr. Hanna states that he was sent to see Gen. Pickering from the Mt. Vernon company, "to make a connection," and he was instructed by Gov. Casey and the others acting for the company, to offer Pickering $10,000 for his charter—"to form some kind of a consolidation with his charter through Wayne county."

We ask, would the Mt. Vernon company have offered in 1859, so large a sum to "secure some kind of a consolidation," if Judge Scates, in 1855, "knowing how to draft what was necessary" to accomplish that same end, had "done the thing properly?" We think not.

In the testimony of Mr. Hanna we find another important statement, not at all corroborative of Mr. Norman A. Smith's testimony that "there was" a consolidation of the Mt. Vernon and the Belleville & Fairfield charters. Mr. Hanna informs us that he was not only the agent of the Mt. Vernon company in these negotiations with Pickering, but was acting at the same time as the agent of Van Duzer, Smith & Co., of which firm Mr. Norman A. Smith was a member. Mr.

Hanna says he understood Gov. Casey was the only one who was a member of the corporation. "*The business was being transacted by Smith and Company.*" Then, if we turn to the contract on pages 41, 42, 43, 44, 45 and 46, wherein it was considered necessary to transfer to Mr. Norman A. Smith and his co-partners, "all the privileges and corporate powers in the act of incorporation of said Mt. Vernon Railroad Company contained, together with all the stock, property, rights and credits, belonging to or in anywise appertaining to the same," and observing that this contract was made in October, 1858, we can readily understand why Gov. Casey was about all that was left of the corporation, and that "the business was being transacted by Smith & company." When we consider these facts, in connection with the further fact, that during all the year 1859, while these negotiations with Pickering were in progress, Smith was a director and the treasurer of the Mt. Vernon company, we are justified in asking Mr. Norman A. Smith how he can reconcile his acquiescence in those negotiations, even in the offer to Pickering of $10,000 to give them a connection eastward through Wayne county, with his sworn statement that "there was," prior to 1859, a consolidation of the Mt. Vernon and the Belleville & Fairfield companies?

It is very evident Mr. Norman A. Smith did not know anything about the matter to which he testifies.

Further, on the question of consolidation of the Mt. Vernon and the Belleville & Fairfield railroad companies, in 1855, as averred in the 2d and 3d amended bills:

We see by reference to pages 25 and 26 of the opening argument for the appellants, that on the 11th of February, 1857, the charter of the Belleville & Fairfield company was amended by the Legislature of Illinois, and the name changed to "The St. Louis & Louisville Railroad Company," and its line extended to Jeffersonville, Indiana.

Now it would seem quite strange, if the averments of the 2d and 3d amended bills are true—that on the 30th of April, 1855, the officers and Directors of the Mt. Vernon railroad company and of the Belleville & Fairfield railroad

company, entered into such an agreement that "the said two roads were joined, connected, or intersected; and also said two roads, by such agreement, were *then and there so consolidated as to make but one road* running through said counties of Wayne and Jefferson; that by said joinder, connection *or consolidation* of said two companies under said agreement, the said companies were organized *under the name of "The Mount Vernon Railroad Company:"* we say if these averments be true, it is quite strange the Legislature of the State should, two years afterwards, recognize the Belleville & Fairfield railroad company as still in existence, and proceed to amend its charter in the mode suggested.

And still further, we find on pages 174, 175 and 176 of the record, certain "*Articles of agreement to join together, unite, consolidate and merge the Belleville & Fairfield railroad charters and companies with the Alton, Mt. Carmel and New Albany railroad charter and company,*" executed on the 26th of February, 1859.

Then, on pages 41, 42, &c., of the record, is a contract bearing date the 20th October, 1858, between Norman A. Smith and others, of the first part, and the county of Jefferson, party of the second part, Joel Pace, "trustee of the Mt. Vernon Railroad Company, and of said county of Jefferson," of the third part, and Gov. Casey, W. Duff Green, Harvey T. Pace, and various other individuals, of the fourth part.

In this contract we find recognized the existence of the Belleville & Fairfield company, under the new name into which it was baptized by the act of 1857—the "St. Louis & Louisville Railroad Company," and after referring to the fact that negotiations were then pending between Mr. Norman A. Smith and his partners, and the county of Wayne, in relation to the building of a railroad for that county, the contract contains the remarkable recital, that, in the event of an agreement with Wayne county, it is desirable "*that the said Mt. Vernon Railroad company should become consolidated with the other railroads, as provided in said above recited acts, so far as the same may become practicable.*" So it seems the parties to this contract did not regard the arrangement made in 1855, whatever it was, as having "been done properly."

This Belleville & Fairfield Railroad Company certainly exhibits a rare tenacity of life—indeed it seems to be endowed with the nine lives of a cat. It was born of legislative parentage on the 15th of February, 1855, and after a few months of quiet existence, not even having become organized any further than its organization was effected by the charter itself, nor received a dollar of subscription to its stock, on the 30th of April, 1855, in the village of Mt. Vernon, "over Joel Pace's store," it surrendered up its existence, became consolidated, as the appellants aver, with the Mt. Vernon company, and losing even its baptismal name, in that of the "Mt. Vernon Railroad Company" into which it had become merged. In two short years afterwards it is resurrected into life by the act of the legislature of 1857, but only to be immediately transformed into the "St. Louis & Louisville Railroad Company," with its capacity for usefulness considerably enlarged. In the contract alluded to, in 1858, its existence in this new guise is recognized even by several of those who participated in 1855, in its supposed absorption by the Mt. Vernon Company.

Then again, in 1859, it appears in full life and vigor, and voluntarily yields up its franchises, its powers, its very existence, and even its name a second time bestowed, and becomes merged in the "Alton, Mt. Carmel & New Albany Railroad Company."

This might well be supposed to have terminated the eventful life of the Belleville & Fairfield railroad company; but it is not allowed to rest in peace—but after so many years of death it is summoned to appear in court, to do duty in the way of forming an "intersectional connection," merely, with the Mt. Vernon Company, which had once absorbed it altogether.

We have adverted to the evidence on the question of the consolidation of these two companies, at some length, because the complainants have relied upon that alleged fact in their pleadings as the final ground upon which they have chosen to stand in asserting the power of Wayne county to execute this mortgage, and further, because we regard that fact as involving the real point in this case, that is, whether the Mt.

Vernon railroad ever was "joined, connected or intersected," with or by any railroad running through Wayne county, or rather, as the question is narrowed down by the pleadings on the part of the complainants, was the Belleville & Fairfield company, on the 30th of April, 1855, consolidated with the Mt. Vernon railroad company?

All the various original and amended bills filed by the complainants go upon the theory, that in order to the existence of any power on the part of Wayne county to bestow its swamp lands in aid of the construction of the Mt. Vernon railroad, either the Mt. Vernon railroad must run through that county, which we have seen was impossible, or the Mount Vernon road must be found to have been "joined, connected or intersected," by or with some other railroad which *does* run through that county. And if this is not the proper construction, it is certainly the most favorable to the appellants which can be given to the Mt. Vernon railroad charter, under which the power must be deduced, if it exist at all.

But the appellants have selected the *particular* road, from a number which they say run through Wayne county, with or by which they claim the Mt. Vernon railroad was "joined, connected, or intersected." They have expressly averred that particular road to be the Belleville & Fairfield road, and upon the allegation of the "joinder, connection, intersection, or *consolidation*" of the Mt. Vernon road with that road, they aver that therefrom the power is to be deduced under which Wayne county could legally make a mortgage of its lands to secure the payment of bonds issued by the Mt. Vernon Railroad Company.

We insist, then, that the appellants must recover, if at all, upon the case they have made in their bill. They can not aver the consolidation was with a certain specified road, and be permitted to prove or argue that the Mt. Vernon road had some sort of vague connection with some other of the various lines at that time contemplated. Nor can they be permitted to allege that the connection between those two roads was of a certain, distinct, specified character, as that it was a *consolidation* by and through which one of the companies was abso-

lutely merged in the other, and prove that the connection thus formed was something less than a consolidation, neither company losing its separate existence or its name, indeed amounting only to an "inter-sectional connection," whatever that may be.

In this view of the issue to be tried, it seems to us, not only that the appellants have utterly failed by their evidence to prove the averments in their bill, but the rebutting evidence adduced by the appellees on that subject leaves the question clear beyond a doubt that those averments are not true — and this seems to have been the view of the court below in dismissing the bill.

Judge Scates is the only witness whose testimony is entitled to any consideration, and even he does not profess to state facts, but only his legal conclusions. He does not state what he did, but what he wanted to do. He does not give the contents of the paper drafted by him, in order that the court may judge of its legal effect, but only his legal opinion as to its effect, if he knew how to accomplish what he desired.

This Court can not, under the rules of evidence, regard this testimony as of any weight whatever. It should not have been admitted at all. The character of such testimony is very clearly settled in the case of *Massure* v. *Noble*, 11 Ill. R. 531, where, in an action of ejectment, it was proposed to show by parol the contents of a petition for partition which had been lost from the files of the Court. Mr. JUSTICE TRUMBULL, in delivering the opinion of the Court said: "A witness was permitted to testify that, as attorney, he filed the original petition, and sued out process, that the same was duly served, and that the petition and all the proceedings were regular and in proper form, and that the petition set forth all that was necessary as to the rights of the parties, and other matters necessary and proper. The admission of the evidence was clearly improper. The witness should have been requied to state the contents of the petition, that the Court might determine its sufficiency. His opinion that it contained all that was necessary and proper may have been erroneous, at all events, he was not the proper judge of that matter."

But apart from this, the rebutting evidence clearly shows, that no one besides Judge Scates ever supposed he had accomplished what he designed—the formation of any connection between the two companies.

The appellants, however, do not seem content to rest their case on the averments in their bill.

It is also claimed by counsel for appellants, that the power in Wayne county to make this mortgage exists or is derived, from the fact that the County Judge of said county and an Associate Judge, in November 1858, made a contract with certain persons under the name of Vanduzer, Smith & Co., for the construction by said firm of a railroad running from Mt. Vernon to the east line of Wayne county.

This contract is found on page 46 et seq. of printed record. In this contract the aforesaid county officers stipulate that they will procure a right of way for said railroad through Wayne county and also an assignment of some charter, not specifying any particular one.

This is termed by appellants' counsel "a connection by contract, of the Mt. Vernon railroad at Mt. Vernon with a railroad through Wayne county, to be built by the procurement and contract of Wayne county, from east to west and on to Mt. Vernon."

It should also be stated that this contract, and a similar one made by Jefferson county, were on September 12, 1859, assigned by Vanduzer, Smith & Co., to the Mt. Vernon Railroad Co. We understand counsel on the other side to claim, that Wayne county derived the power to make this contract from and through the 7th and 8th sections of the Mt. Vernon charter, which authorizes certain counties to aid in various ways there specified, the construction of the Mt. Vernon railroad; they also claim that the county possessed this power to contract for the building of a railroad through its limits, by virtue of its municipal organization and the powers incident by common law thereto.

That no such power to make this contract can be derived from the 7th and 8th sections of the Mt. Vernon charter, we respectfully submit will be apparent at a glance at those

sections; they simply, in the first place, authorize the railroad company in said act created, to borrow money and secure the same, and next, empowers Jefferson county to subscribe to the capital stock of said company, issue bonds, and provide for the payment thereof by sale or mortgage of the swamp lands of said county, &c.

As to the second proposition that a county possesses the power to build a railroad by virtue of its municipal organization, we must respectfully dissent *in toto* from such conclusion; if this proposition is correct, a county can do many things not generally believed to be in their power. If they can build a railroad in the proper exercise of their municipal powers, then they certainly can operate it, and would necessarily be liable on all the relations arising out of the same; if the county was situated on a navigable stream, it would be difficult to say, they could not in addition to building a railroad through its limits, also construct and maintain a line of steamboats or other water crafts to operate in connection with the railroad; might they not also erect and operate mills or other useful works, and all, as counsel say, "to effectuate and accomplish a policy, an end, an improvement."

The answer to all this, we submit, is, that a county is created by the law-making power, a municipal organization for the purposes of government alone, and sustains to the sovereign power the relation of a mere corporation, with only such powers as have been expressly granted, or result by necessary implication.

That it can not be said to accomplish these purposes, a county has the power to embark in a general system of internal improvements; such as constructing railroads, however much such works might aid in the development of their resources or prove beneficial and convenient to its citizens.

We therefore deny that the officers of Wayne county, who made this building contract with Vanduzer, Smith & Co. had the power requisite to make any such contract, and especially is this so, when we consider for what purpose it is introduced into this case, which is, to show that thereby, there was a railroad running through Wayne county with which the Mt. Vernon railroad might be joined, connected or intersected.

The counsel for appellants, in their printed argument before us, on page 15, claim that counties in Illinois have power to convey any real estate belonging to them, and given by "general statutes always in force and still in force in this State:" in support of their claim, they cite various sections from the statutes of the State upon that subject; they also cite the law of February, 14, 1859, which gives county courts the power to sell and dispose of the swamp lands, lying in their limits; all which sections and law we think are correctly quoted.

They insist that "all these acts were in force at the date of the deeds sued on, and confer ample power to make them, and to carry out, under the 4th section of the last act (set out on page 17 of argument) the building contract of Wayne county, under which she had already disposed of her swamp lands by the building contract."

These several acts unquestionably authorize and empower a county to sell and convey real estate which it may own, and of course use the proceeds in any legitimate manner.

While this is so, yet we claim and insist, that under none of these acts, nor through any powers a county may have, no matter how derived, can it make a pure gift or donation of its money or property to aid in constructing what may be called, public improvements.

The mortgage in this case sought to be foreclosed, notified the holder of any bond of the Mt. Vernon Railroad Company, that at an election held in Wayne county the following proposition had been submitted to the voters of said county, viz:

"For appropriating the swamp lands of Wayne county as a *bonus* to any company for building a railroad through said county," and that an affirmative vote upon said proposition was the authority for executing said mortgage. We insist that a vote on such a proposition is an absolute nullity, and with or without the sanction of a majority vote of the voters of any county, a donation of the property of a county to a corporation, or to individuals, to aid in the construction of a railroad, is absolutely void. A county, as we contend, cannot acquire property for purposes of trade or speculation and what it does acquire or hold, it does so to enable it to perform its

governmental functions; in almost every case, whatever it does acquire in the way of property, it acquires through and by operation of the taxing power, conferred upon it by its sovereign, and while, as this court has repeatedly decided, it may, when expressly authorized, subscribe for stock in a railroad company, and will be compelled to pay in accordance with such subscription; yet we respectfully submit, that to donate its property thus, or in any other manner acquired, is beyond the limits of their authority.

We do not desire to elaborate this proposition at any length, but cite the court to the cases of *Whiting* vs. *Sheboygan* R. R. Co., 25 Wis. Rep. 157. *The People ex rel, the Detroit & Howell R. R. Co.* vs. *The Township Board of Salem*, reported in Am. Law Reg. August, 1870, page 487, where this subject has been examined and decided in accordance with the position here assumed.

We have thus far considered the case in view of one of the elements which must exist in order to invest Wayne county with the power to make this mortgage, that is, that the Mount Vernon road must appear to have been "joined, connected or intersected," or *consolidated* with the Belleville & Fairfield road, or at least, some railroad running through Wayne county.

We now propose to consider the subject in connection with another element equally essential to the existence of such power.

The 9th section of the Mount Vernon railroad charter provides, substantially, that such connection having been accomplished, with a railroad running through Wayne county, then various other sections shall apply to such county, and among them the 8th, which is as follows:

"Before any disposition is made of said swamp and overflowed lands, or any subscription to the stock of said company, the county court may, at any regular or special term of said court, order a special election to be held for the purposes of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and returns made, canvassed and

published in all respects as other county elections. The county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road; which said proposition shall be printed at large, as an election ticket, and the voters may express their will on said proposition by writing 'yea' and 'nay' on said ticket. Those opposed to any and all the propositions or plans may express their dissent by voting 'nay' on a separate ticket. The proposition or plan having the highest number of votes shall be adopted by the county court: *Provided*, a majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election."

There can be but one construction given to this section, that is, that a compliance with its terms is a condition precedent to the existence of power in the county, to dispose of its swamp lands in aid of the construction of any railroad.

The provision that before any disposition is made of such lands the county court "may" call an election, evidently means, when taken in connection with the other portions of the section, that such an election "shall" be called, and this appears to have been the view of the pleaders who drafted the original and amended bills in this case, inasmuch as they undertake to show, with much particularity, what was done in that regard. And the counsel themselves seemed to doubt whether the law as embraced in this section has been complied with, by assuming that we are estopped in various ways from questioning the sufficiency of the proceedings under it, a view which will be considered hereafter.

Now what was required by this eighth section to be done? The county court is required "to *prepare a proposition or propositions* OF THE MODE OR MODES, *one or more, containing a brief, clear, distinct idea* OF THE PLAN OR PLANS *proposed by them for aiding in constructing of* SAID ROAD." Then to exclude the idea that the vote is to be taken upon any *general* proposition to bestow the lands *in some way or other*, in aid of *some* railroad enterprise, the section, after providing that the voters

may express their will "*on said proposition* by writing 'yea' and 'nay' on said ticket," declares that "*those opposed to any and all the* PROPOSITIONS OR PLANS *may express their dissent by voting 'nay' on a* SEPARATE TICKET."

What was done in respect to such an election? Let us look into the original and amended bills to see what was done.

The original bill avers (page 3 of the record) "that under the authority of and pursuant to the provisions contained in the 8th section of said act incorporating The Mount Vernon Railroad Company, the county court of Wayne county did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether said lands *should be mortgaged* to aid in constructing *said road;* that notice of said election was duly given, as prescribed by said order providing for said election, and that at the election so held, a majority of all the votes cast at said election, (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, *which was as follows, to wit: 'For appropriating the swamp lands of Wayne county,* AS A BONUS TO ANY COMPANY *for building a railroad* THROUGH SAID COUNTY.'"

The first amended bill avers (on page 7 of the record) "that, under the authority of, and pursuant to the provisions contained in, the 8th section of said act incorporating the Mt. Vernon Railroad Company, the county court of Wayne county did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether the said lands *should be appropriated as a bonus to aid in constructing a railroad through said county;* that notices of said election were duly given as prescribed by said order providing for said election, and that at the election so held, a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, *which was as follows, to-wit: 'For appropriating the swamp lands of*

Wayne county AS A BONUS *to any company for building a railroad* THROUGH SAID COUNTY,' " and the pleader adds, that in pursuance of such vote the county made this mortgage, to aid in constructing a road which could not by possibility touch Wayne county.

The second amended bill (on page 16 of the record) recites the 8th section in full, (by mistake calling it the 9th) and avers (on the 17th page of the record) "that, before any disposition was made by the said county of Wayne, of the swamp and overflowed lands in Wayne county, belonging to said Wayne county, Illinois, at a special term of the said county court of the county of Wayne, held on the 28th day of September, 1855, an order was duly made and entered by said court, whereby a special election was ordered and directed to be held on the 5th day of November, 1855, for the purpose of taking the sense of the qualified voters of the county of Wayne *upon the mortgaging* of that portion of the overflowed and swamp lands, *or to donate* said lands *as a bonus*, in the said county and hereafter described, for the purpose of aiding in the *construction* AND MAINTENANCE *of the said Mount Vernon railroad*, and the said county court did then and there order public notice of such special election,'' etc.," *and the said county court did then and there prepare a proposition containing a brief, clear and distinct idea* of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket," etc., " *in the words and figures following*, to-wit: '*For appropriating the swamp lands of Wayne county* AS A BONUS *to any company for building a railroad* THROUGH SAID COUNTY." And the pleader then avers (on page 18 of the record) that in 1859, near four years after the election was held, the county court canvassed the vote, and "did adopt the *proposition or plan* having the highest number of votes as above set forth," and thereupon made this mortgage.

The third amended bill, after reciting said section 8 (on page 24 of the record) avers (on page 26 of the record) that the County Court of Wayne county ordered an election to be held at the time before stated, "*for the purpose of taking the sense*

of the qualified voters of said county upon MORTGAGING OR APPROPRIATING " such swamp lands " to any company that would build a railroad through said county of Wayne," and that " the said County Court did prepare a proposition containing a brief, clear and distinct idea of the plan proposed for aiding in constructing said road," and did cause said proposition to be printed at large as an election ticket, as follows, to-wit: "*For appropriating the swamp lands of Wayne county* AS A BONUS *to any company for building a railroad* THROUGH SAID COUNTY.'" And the pleader says (on page 27 of the record) " that the County Court of Wayne county aforesaid, *being desirous of aiding in the construction of a railroad running through said county,*" " resolved to mortgage and pledge the same to secure the payment of the principal and interest of the bonds aforesaid "—that is, the bonds of the Mt. Vernon Railroad Company, issued for the construction of its road, the eastern *terminus* of which was eleven miles from Wayne county, and its course as then selected running in a directly opposite direction from Wayne county.

We have thus given the statement of the appellants as to the form and character of the proposition ordered by the County Court of Wayne county to be submitted to the people of that county.

But before considering the sufficiency of the proposition so alleged to have been made, it may not be improper to observe that there nowhere appears in the record any evidence that any such order was ever made by the county court. We find on pages 75 and 76 of the record, two orders on that subject, but neither of them has any sort of resemblance to the one alleged in the original and amended bills.

On pages 75-6 of the record is an order of the September special term, 1855, of the County Court of Wayne county, as follows:

" Ordered that the Clerk of this Court be required to advertise for a poll to be opened at the ensuing November election, that the people may vote for or against the county court of said county *giving as a bonus twenty-five hundred acres of our swamp lands per mile to any responsible company* THAT WILL

BUILD A RAILROAD THROUGH SAID COUNTY, *commencing at a suitable point on the Central Railroad, and running east by the way of Mt. Vernon and Fairfield* to the east line of *Wayne county, or to Mt. Carmel, on the Great Wabash River.*

Then on page 76 of the record we find an order of the County Court of Wayne county, passed at the October special term, 1855, which, after reciting a preamble and resolution adopted at a meeting of the citizens of Wayne county, as follows:

"Whereas, the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way; therefore,

Resolved, That the said county court be requested to order a vote 'For a railroad' and 'Against a railroad,' and if the majority of the votes in the county be cast for a road, the said county court shall give our swamp lands, or such part thereof as shall be necessary to secure *the building of a railroad through Wayne county*," thereupon the court "ordered that the Clerk of this Court be required to advertise for a poll to be opened at the different precincts of Wayne county, at the ensuing November election, *that the electors may vote for a railroad and against a railroad*, in pursuance of the foregoing resolution."

These are the only orders of the county court of Wayne county on that subject we are able to find in the record, and the only ones, we understand, which were ever made, and the court will perceive how utterly unlike either of them is to that alleged by the appellants.

And the citizens of Wayne county, who seemed so solicitous to bestow that splendid domain of 100,000 acres of land, upon any company that would build them a railroad east from Mt. Vernon and on *through their county*, may well reflect upon the uncertainty of human endeavors to accomplish some good purpose, if they shall be informed by this court that their lands are gone, although not one cent of the money arising from them has ever been applied so as to secure the desired end—as to this day, there is not one foot of railroad east of Mt. Vernon so as to afford to Wayne county the long coveted outlet east and west.

But to recur to the subject of the requirements of the 8th section of the Mt. Vernon railroad charter in respect to the character of the "proposition" or "plan" to be submitted to the people of Wayne county, and the sufficiency of the proposition which the appellants allege was submitted: The proposition alleged to have been submitted was this: "*For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county.*" And this proposition the appellants insist embraces a "brief, clear, distinct idea" of a "plan" to aid in the construction of the *Mt. Vernon railroad*, whose nearest point to Wayne county is eleven miles west of its most western boundary, and by *mortgaging* these lands *to secure the payment bonds to be issued by that company!*

It is very apparent, on reading the 8th section of the Mt. Vernon charter, that something more should be submitted to the people than the mere general proposition, whether the swamp lands should be devoted to railroad purposes. The people were to be allowed to determine, in addition to that general question, the particular mode or plan by means of which the end was to be attained—whether by donation, by borrowing money on the faith of the swamp lands—by selling the lands and applying the proceeds—or by mortgaging the lands to secure bonds to be issued by the company sought to be aided, or in any other of the many modes of giving aid which might be resorted to. An end was to be attained—that end was, *the construction of a railroad through Wayne county.* The best mode of accomplishing that purpose was a question of importance and about which men might well differ. So the people were to have an opportunity to decide that question for themselves, so far as the application of these swamp lands was concerned. They were to have submitted to them a "*proposition or propositions of the mode or modes*, one or more, *containing a brief, clear, distinct idea of* THE PLAN OR PLANS PROPOSED" "*for aiding in constructing the said road.*" Not only shall these lands be appropriated for such purpose all, but if so, in what *manner* shall they be applied?

Language could hardly be employed which would more clearly express the character of the proposition to be submitted to the people.

In addition to specifying the *mode* of rendering the aid, the *object* sought to be thus aided should be specified. The road or company should be named—the route or course of the proposed road should be indicated, whether it was to run through the county north and south or east and west. All of these elements were of the first importance in determining, first, whether the lands should be used for such purpose at all, and second, in what mode they should be used.

Any other manner of putting the question to the people, would be no less than a trick and a fraud.

The facts in this case afford a most forcible illustration of this idea. There were many and rival projects for railroads at the very time this vote was alleged to have been had. Judge Wilson tells us in his testimony, on page 155 of the record, in answer to the question "what was the character of the canvass and the pretences of those who were making it—the different pretences?" that the fact was there was canvassed two roads, probably, "the general canvass was however in favor of the Mt. Carmel, Fairfield & Belleville. It was understood at that time to be controlled by General Pickering. That was the understanding; I don't know whether it was so or not. But then there were some who advocated a *north and south road.*" And then further on in his testimony Judge Wilson informs us this election he thought was gotten up to prevent the county court from disposing of the lands.

On these facts what a variety of reasons could be given to the people of Wayne county why they should support this vague and indefinite proposition, adapting the different arguments to the locality and interests of the different sections of the county.

A question of similar character was before the Supreme Court of Illinois, in the case of *Supervisors of Fulton county* v. *Mississippi & Wabash Railroad Co.* 21 Ill. R. 373. An election was held in Fulton county upon the question whether the county should subscribe to the stock of *two railroads*, the law

under which the election was held, differing from that which we are considering, in that it required, in terms, that the notices of the election should specify the company in which the stock was proposed to be subscribed. But that consideration does not diminish the force of the decision upon the question of *fairness*. Mr. JUSTICE BREESE, in delivering the opinion of the Court in that case, upon the subject of taking the vote in respect to two companies at the same time, says: "This is not only not pursuant to the law, but is manifestly unfair. All elections, as well for measures as men, should be perfectly free, uninfluenced by any consideration, other than the merits of the individual man or measure proposed. We boast of the freedom of the elective franchise, should we not strive to swell the boast by its purity also? A single, isolated measure, such as a railroad, may not unite a majority of a county to whom it is proposed. It may favor, if constructed, one portion of a county more than another, and thereby be prevented from receiving a clear majority vote, such as the law clearly contemplates shall be given. Is it fair, in order to accomplish this object, to attach another measure to it, to be voted on at the same time, which may benefit the opposing portion of the county? The law never intended that two roads should be coupled together, and the people forbidden to vote for one if they did not also vote for the other, the one road being really a bribe offered for votes for the other. The truth is, the voters of Fulton have never had an opportunity to vote, and never have voted this subscription, for the question was at no time distinctly before them. The question before them was, will you vote for a subscription to two roads? Neither road has received the approving vote of the people, and until that is done, until the naked single question shall be fairly presented to those voters, they ought not to be bound, or injuriously affected, *by any such jockeying management and log-rolling*. By this system, condemned as it has always been, by the moral sense as well as sense of justice, of the whole country, it should at this day find no favor in the courts. We do not hesitate to say, this proposition to vote on two roads at the same time, was not authorized by law, and is a fraud on the

people. This tacking one measure upon another, is unjust in another view, as it gives the county court power to weigh down a popular single measure, by attaching odious measures to it, and thus virtually depri ving the people of their right to vote on the one measure, the success of which would greatly promote their interests."

"Such maneuvering should be condemned everywhere, as unfair and unjust, and we so regard it."

The character of the proposition submitted to the people of Wayne county was even more vicious, if possible, than that so justly condemned by Mr. Justice BREESE. For if this is to be regarded as sufficient, then the vote of the people will have been surreptitiously obtained in favor of any of the many projects which the county court might adopt, when in fact perhaps not a single voter had that project in his mind at the time he voted at this election. And this case illustrates that view most forcibly. What voter could have supposed, on reading his ticket—that the swamp lands of Wayne county might be given *as a bonus* to any company for building a railroad *through that county*—that he was about to vote for the *mortgaging* of those lands to secure the bonds of a railroad which *could not, under its charter, enter within the boundaries of Wayne county at all?* The proposition was in itself a trick, a cheat, and a fraud upon the people.

These bondholders can not complain at being held to the proper legal effect of this "jockeying management and log-rolling" scheme to cheat the voters of Wayne county. The bonds on their face refer to the mortgage—the mortgage refers in the most explicit way to the Mt. Vernon charter as the source of power in Wayne county to make it, quoting the very language of the proposition alleged to have been submitted. The bondholders had every inducement and every opportunity to know the facts. They had express, direct notice, if that were necessary, of the utter worthlessness of the whole proceeding.

We have considered this question upon the supposition that the proposition set out in the complainants' bill was the one which the county court ordered to be submitted—but when we

turn to the order entered by the court at the September special term, 1855, we find the proposition directed to be submitted, to be of a character essentially different from that described in the 2d and 3d amended bills. We find the order on pages 75 and 76 of the printed record. It is, "*that the people may vote for or against the county court of said county* GIVING AS A BONUS *twenty-five hundred acres of our swamp lands per mile to any responsible company that will build a railroad through said county, commencing* AT A SUITABLE POINT ON THE CENTRAL RAILROAD, AND RUNNING EAST BY THE WAY OF MT. VERNON AND FAIRFIELD TO THE EAST LINE OF WAYNE COUNTY, OR TO MT. CARMEL ON THE GREAT WABASH RIVER."

How different this from that averred to have been submitted —to appropriate the swamp lands of Wayne county as a bonus to any company for building a railroad through that county! The former, if it had been alleged to have been the one submitted, would have had at least the element of fairness and honesty in indicating to the people the route proposed to be taken by the road which was to be the recipient of so handsome a bonus as 100,000 acres of land worth over half a million of dollars.

We have heretofore adverted to the fact that the mortgage sought to be foreclosed in this suit does not even purport to be the deed of Wayne county, but only of certain individuals who describe themselves as holding certain offices. While it may be that in a case where the power to execute the instrument was clear, and the parties sought to be bound thereby had received actual benefit therefrom, a court of equity would not regard this consideration of controlling importance, yet in a case like this, where the power itself is denied to exist, and no beneficial results whatever have accrued to the party sought to be affected, such a palpable infirmity in the deed should at least be regarded as sufficient to prompt an ordinarily prudent man to inquire the more diligently into all the circumstances connected with the transaction.

We proceed to notice another point made by our opponents in their printed argument, and that is, the effect of sundry recitals which appear in a conveyance of these lands made by

the County Judges of Wayne county to one Charles Wood as trustee, on the 13th day of March, 1856, and found on page 117, *et seq.* of the record.

As we understand the position of opposing counsel, it is that the recitals in that deed (as they say) of a connection having been made by or between the Mt. Vernon railroad and the other roads named, is such an admission by the county of the fact of connection, that it will prevent the County from denying the same, and operates to this extent by way of estoppel.

The said recitals, which are quite lengthy, (see pages 119, 120 and 121, record,) no where say that any connection or intersection of any of the roads therein named had been made, but simply that said roads would pass through certain places and would necessarily connect or intersect each other at the places named; that is, if they were so built as to connect or intersect with each other.

Three different roads are mentioned in these recitals: the Mt. Vernon road; the Belleville & Fairfield road, and the Mt. Carmel road; all of which might have been built, each by a different corporation, and neither be joined, connected or intersected with the other; whether after they were built, such joinder, connection or intersection should take place would be a question to be determined by their respective boards of directors, and one which the county of Wayne could not in any manner control nor bind itself to any extent by reciting.

If seriously insisted upon that any estoppel arises from what is recited in this deed, we answer, that these complainants are entire strangers to this instrument and can take no benefit from it; there is no proof in the record that they ever saw or heard of it, and of course their action could not have been at all influenced by it, and under such facts there can be no application of the law of estoppel, as it doesnot operate as to strangers.

Carver vs. *Jackson*, 4 Peters, 83.

Neither does the doctrine of estoppel apply to a grantor acting officially as a public agent or trustee.

Greenleaf's Evidence, Sec. 24;
Fairtitle vs. *Gilbert*, 2 T. R., 174;
Co. Lit., 363, b.

The complainants claim that Wayne county got the benefit of one-half of this issue of bonds of the Mt. Vernon company, and consequently is not equitably entitled to defend herself against them. We deem this statement of the fact by no means an accurate one. The record shows (page 93) that $400,000 of these bonds were placed by Judge Wilson, of Wayne county, in the hands of Charles W. Lewis, June, 1860, who was then Treasurer of the Mt. Vernon company, having been so appointed May 11, 1860 (page 90 record;) that any of these bonds were ever negotiated by Wayne county or any of the proceeds thereof received by her, nothing in the record shows.

Judge Wilson testifies that he never sold any, while N. A. Smith in his deposition (page 117 record), states they were withdrawn by Judge Wilson, "to negotiate them for the use of the road."

After reading what is contained in this record, we think it will be apparent that after November 19, 1858, the firm of Vanduzer, Smith & Co. constituted the Mt. Vernon railroad company, they being its directors and officers, and contractors for its building; whatever was required by them was done, and in this whole matter of negotiating these bonds, Judge Wilson, and indeed, all others connected therewith, were the mere puppets, who acted as they were directed by this enterprising firm. Whatever was got, if anything, for these bonds, passed into the control of the railroad company, represented by this firm, who did what work they saw fit on the road, and then surrendered up the road, so called, with their contract, since which, so far as the record shows, nothing was ever done.

That Wayne county ever received any benefit from these bonds, we maintain is nowhere shown, and indeed can not be shown; that her county officers executed this mortgage is true, but under such circumstances, we contend, as render it without any binding force. The counsel for appellants insist that these bonds are to be treated as commercial paper, and to

be governed by the well established rules relating thereto, and cite many decisions of this Court upon that subject. That all the decisions cited are in point we do not deny, so far as that question is concerned; we submit they do not touch this case. In an action on these bonds, against the maker of them, the Mt. Vernon Railroad Company, all the decisions cited would apply, of course; but we inquire, what is our position? This is a bill in equity, filed to foreclose a mortgage given by Wayne county to secure the payment of the obligations of another; relief being sought in equity against the county, the rules that obtain in such cases will apply; that the Court in such a suit will not be confined to legal rights, but will look beyond them to the substantial, equitable rights of the parties. We therefore claim that we are at perfect liberty to set up all these facts which go to show that the officers executing this mortgage had no power, under the circumstances, to execute it, and that we are not concluded by the decisions referred to, as we admit the Mt. Vernon Railroad Company would be, in a suit at law against it on the bonds themselves. We understand the rule to be, that in a suit in equity to foreclose a mortgage, the defendant may interpose any defense he may have, even though it be his own paper the mortgage was given to secure, and held for value by an assignee before maturity.

This doctrine is laid down by Chancellor Kent, in *Murry* vs. *Sylburn*, 2 Johnson C. R. 441, and approved in *Westfall* vs. *Jones*, 23 Barb. 10; *Mott* vs. *Clark*, 9 Penn. State Rep. 399, and in *Olds* vs. *Cummings* 31 Ill. 188.

It will be perceived by the Court, that we are not resisting the foreclosure on any ground of irregularity in the way the power was exercised in making this mortgage; but on the ground, that under all the circumstances set forth in this record, no power whatever existed in Wayne county, or in any of its officers, to execute this mortgage; thus bringing ourselves directly within the principles enunciated by this Court in the case of *Marsh* vs. *Fulton County*, 10 Wallace, 676.

It can not, we think, be maintained, that a county, existing for the purpose of municipal government mainly, if not en-

tirely, can or does possess the general capacity to make such a contract as is in suit in this case, independent of the statute. In the case last referred to, this Court say: "This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might, for such reason, be taken without special inquiry into their validity. It is a case where the power to contract never existed—where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder."

Under the principles here laid down, was it not incumbent on every person, before purchasing any of these bonds and relying at all on the security claimed to have been given by and through this mortgage, to examine into and see what powers had been given to Wayne county or its officers to execute a mortgage on such an immense tract of land, to secure the bonds of another and totally different corporation, which mortgage recites the fact that they were issued by a mere railroad company, and the most casual examination of the charter named, would have shown that it had no power by its charter to build a road within several miles of the county thus mortgaging its property?

Having shown, as we think, that the county of Wayne, nor the officers who it is claimed acted for it, possessed the power, under the facts of the case, to make this mortgage, we respectfully submit the case, and ask that, in accordance with the decision of the court below, the decree rendered by the circuit court may be affirmed.

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